

T. T. K. and Birla House

DEBAJYOTI BURMAN

M.A. (Economics), M.A. (Politics), M.A. (Commerce), M.A. (Ancient Indian History and Culture), M.A. (Islamic History and Culture), M.A. (History), M.A. (Philosophy)
M.A. (English), M.A. (Bengali); Lecturer, Bangabasi College, Calcutta
Advocate, Calcutta High Court, Editor: Jugabani (Bengali Weekly)

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FOREWORD

Since this book went to the Press, Mr T. T. Krishnamachari went to U.S.A. and Europe in search of money for financing the Second Plan. He was unofficially accompanied by the Birla mission. Both followed the same itinerary. The Finance Minister failed to attract foreign finance while the Birla mission boasted of success. Meanwhile Mr H. V. R. Iyengar, Governor of the Reserve Bank of India, told the International Industrial Development Conference at California that 'the private sector is playing a dominant role in Indian economy today and is bound to play a dominant role in future. It has to be conceded that the justification for the public sector has been couched, in the declaration made by the Government of India, in terms of ideology; but in actual fact there is ample justification for the decisions taken by the Government on strictly pragmatic grounds... Actually, an understanding has been reached that the Government plant will not compete with the private sector in the production of lines on which they are now engaged, and certain further lines which they have proposed to take up. This is a case in which a profitable section of an industry has been reserved for the private sector, and what would be unprofitable for several years to come has been taken up on its own shoulders by Government in the larger public interests... I submit there is nothing in the system (socialism contemplated by India) which should be repugnant to the social conscience of the U.S.A.'

The doctrine of socialism defined by the Congress and adopted by the Government of India has been summed up by Mr Justice Viswanath Sastri, Chairman of the Income Tax Investigation Commission in one short phrase—Robbing Peter to pay Paul. Mr Justice Sastri made this remark in his Report with regard to

charity made by the Birlas out of shareholders' money. The Governor of the Reserve Bank has explained how this doctrine has been further extended to fleece the people through taxes for the benefit of the private sector and private capitalists.

In this book, an example of how public money was used for private gain has been given. A heavy loan was granted to some concerns of the Mundra Group through private negotiations. Mr Tridib Choudhuri M.P. criticized the Finance Minister for this action. T. T. K. was emphatic on 3 December 1957 that there had been no case in which the Corporation had gone out of its way to help any particular individual.

On Tuesday, 10 December 1957, the following news was published:

On an ex-parte application made on Monday before Calcutta High Court on behalf of the Life Insurance Corporation of India, Sir Dhiren Mitra was appointed Special Officer of Richardson Cruddas Ltd, an engineering company, to take charge and supervise the conduct of the business of the said company.

An interim injunction was also issued on Messrs Haridas Mundra, Gwaldas Mundra, Tulsidas Mundra, Manikchand Bagri, Rameswar Daga, Mangtupal Tapuria, all Directors of the company and also upon the S. B. Industrial Development Company (Private) Ltd, the managing agents of the company and/or dealing with the assets of the said company otherwise than in the usual course of business.

Our allegation has been conclusively proved.

There is enough money in the country which can be drawn upon for financing the Second Plan. Arrears of income taxes exceed Rs 200 crores. Mr Kaldor said that the amount of tax annually evaded exceeded 200 crores. The rate of collection of tax demanded is less than 50 per cent. The Public Accounts

Committee, in its 23rd Report, said—‘Out of a total demand of Rs 29·42 crores only Rs 11·96 crores have been collected so far.’ On the other hand, the Government of India ran to the International Bank for a loan of Rs 12 crores.

The Nehru Government has started in motion the dangerous spiral of discrimination, corruption and exploitation. All the vices of the private sector are not only tolerated, but encouraged and supported at the expense of those who suffer. Any honest official coming on their way is shamelessly penalized. Within ten years of freedom, civil administration in India has started cracking and public morality decaying. These are sure signs of death for a nation.

A lone voice in the wilderness may be of little use, but the writer of the present book is one among those who believe that there is need even for a feeble voice as a warning against the coming crash.

12 *December* 1957

AUTHOR

‘The true strength of rulers lies not in armies or emotions, but in the belief of men that they are inflexibly open and truthful and legal. As soon as a government departs from that standard it ceases to be anything more than “the gang in possession”, and its days are numbered.’

—H. G. WELLS

CHAPTER I

INTRODUCTION

In September 1950, the *Mystery of Birla House* was published. The book was dedicated to the President of the Nasik Session of the Indian National Congress and was placed in his hands when the Congress was in Session. Copies were also sent to Pandit Nehru, Sardar Patel, C. Rajagopalachari and Acharya Kripalani.

The effect of the publication was electric. Mr. G. D. Birla came down to Calcutta. A closed door conference was held at the West Bengal Finance Minister's residence where the Chief Minister was also present. This was soon after the Nasik Congress.

The Special Officer of the Anti-Corruption Department and the D.I.G., I.B., C.I.D., West-Bengal were summoned by the Chief Minister. On November 10, 1950 we were surprised to find that instead of pursuing the tax evaders, the Intelligence Branch and Anti-Corruption Police raided the house of N. C. Roy. Instead of the tax evaders being asked to appear before the Anti-Corruption Police, it was N. C. Roy who was twice dragged to the Intelligence Branch Head Quarters where he was detained for interrogation. The house of the author of the book, the press where it was printed, the bindery where it was bound and the office of the block makers were also searched.

In reply to a question tabled in the West Bengal Legisla-

tive Assembly, N. R. Sarker, the Finance Minister, admitted that all the documents reproduced in the book were genuine. He made no effective reply to the allegations made in it.

Pandit Nehru was the only person who took some interest in the matter. He sent a strong letter to Dr B. C. Roy and demanded explanations on all the points raised in the book. The existence of this letter was admitted by the Chief Minister on the floor of the West Bengal Legislative Assembly. Panditji said in it that whenever any of his Officers lay his hand on a big capitalist, charges of harrassment immediately came, but it was the policy of his Government to let the Officer proceed so long as he was within the four corners of law. He expressed surprise at Dr Roy's administrative policy where a reverse stand was taken. The Finance Minister N. R. Sarker drafted a reply to this letter which was found unsatisfactory by the Prime Minister. This correspondence dragged on till the end of February, 1951.

On March 9, a cut motion was moved in the West Bengal Legislative Assembly demanding the appointment of a Tribunal to enquire into the allegations made in the book. In reply, the Chief Minister evaded the main issues and magnified the question of leakage of official secrets. The Chief Minister refused to hold any enquiry and the cut motion was lost.

When the proceedings of the debate reached New Delhi, the Prime Minister sent a strong message to Dr. Roy to find out ways and means to appoint the Tribunal that was demanded. In reply to a question on the same subject, on March 21, Dr Roy, with an injured innocence, accepted the demand

for a Tribunal and said, 'I felt that in the interest of the Government as well as of the assesseees it would be better if we could place the whole of this case regarding the Sales Tax assessment before a Tribunal.'

The Tribunal was formed, but its scope was drastically narrowed down to the mere task of assessment of Sales Tax only on two of the Birla Companies. Enquiry into the allegations against the Finance Minister, Finance Secretary and the Commissioner of Commercial Taxes were entirely left out. Instead of directing the enquiry against the persons who had been publicly accused of having sabotaged the assessments, he made N. C. Roy his target. The public demand was that the truth of the allegations made in the book should be investigated by an impartial Tribunal. Dr Roy proved his extreme cleverness. He agreed to hold the enquiry under pressure from Pandit Nehru but at the same time he completely misdirected the scope of the enquiry. He was interested in the Birlas. For over thirty years, he was intimately connected with this House as their medical retainer and business collaborator. N. R. Sarker was one of the Birlas' numerous dummy directors. He played the trick and succeeded in misleading Pandit Nehru. The Tribunal made an assessment of Rs 4,36,000/- on the Kesoram Cotton Mills and Rs 483/8/- on the Orient Paper Mills. The allegation of evasion was proved, the estimates of N. C. Roy and the Tribunal differed only in amount. The error committed by the Tribunal while making an assessment on the Orient Paper Mills was later rectified by the Income Tax Investigation Commission which made a heavy assessment

on the same evidences detected by N. C. Roy. The Income Tax Investigation Commission followed the arguments advanced by N. C. Roy. Legal quibbles raised by the Sales Tax Tribunal and which benefited the assesseees at the cost of the Public Exchequer were rejected by the Commission.

The Prime Minister of India failed to rise to the occasion and succumbed to machinations of Dr B. C. Roy. Now it was N. C. Roy's turn to be victimized. He was hauled up before a Leakage Enquiry Tribunal. The Leakage Enquiry began at Alipore on April 16, 1951 in a room heavily guarded with armed police. Public and Press were not allowed inside the Court room. The Trial continued upto May 5, 1951. Mr Prokas Chandra Mallik, Advocate, defended N. C. Roy with a degree of ability and sincerety rarely found in these days. The Enquiry Officer said in his judgement, 'there is the undoubted fact that a system in which the functions of the investigator, the prosecutor and the judge are combined in an Officer, as in the case of the Income Tax Department and the Sales Tax Department, does tend to encourage the view that the efficiency of an officer is measured really in terms of the amount of revenue he may bring to the State, irrespective of any consideration of fairplay even to the worst tax dodgers and as far as I could judge, N. C. Roy really allowed himself to be victim of such an impression. . . . As it is not possible for me to say on the materials before me that he had any selfish motives to serve, it will be more charitable to hold that he was sincerely anxious for bringing as much revenue to the State as he could. If that is so, to dismiss him for the offences proved might

quite conceivably be a deterrent to other officers like him from trying to guard zealously the interests of the State and this is hardly desirable.'

On September 21, 1951, in reply to a question in the West Bengal Legislature, Dr B. C. Roy said that the Enquiring Judge had recommended that the Government should call upon N. C. Roy to show cause why he should not be dismissed and N. C. Roy had not replied to the Charge Sheet given to him. The Chief Minister again indulged in two falsehoods. The Judge had not recommended dismissal and N. C. Roy did reply to the Charge Sheet more than three months before the date on which the Chief Minister was speaking.

On July 4, 1951, N. C. Roy had filed a suit in the Calcutta High Court under Article 226 of the Constitution demanding reinstatement. His removal order had not yet been issued. The Advocate General appeared for the government. Instead of facing the issues squarely, he side-tracked the main issues by raising the question of jurisdiction on the plea that as he had not yet been dismissed and was merely under a suspension order, the Court had no jurisdiction to go into the merits of the Enquiry Officer's Report. Bose J., in his judgement said :

There cannot be any doubt under the guise of expeditious disposal of the assessment cases of the Birlas, the authorities of the Finance Department, as also the Commissioner of Commercial Taxes were attempting to put an end to the assessment cases and prevent the petitioner from having a prolonged and detailed scrutiny or examination into the accounts and records

of the Birla concerns. In other words, the authorities concerned were determined to stifle the enquiry which the petitioner proposed to pursue in regard to the assessment cases of the Birlas for detecting the evasion of taxes payable under the Bengal Finance (Sales Tax) Act.

It further appears from the Inspection Notes of the office of the petitioner which was carried out for days in May, 1949 that no serious irregularity about workings of the office was detected by the Commissioner, but, on the other hand, the working was found to be satisfactory. Further, although no proof was available from the files of assesseees of the truth of the allegations made against the petitioner in the Finance Secretary's letter dated the 19th May, 1949 yet the Commissioner had formed the impression that some of the files had not been handled as well as they should have been and it seemed to him that the assessments in some cases were being unnecessarily delayed. The expression 'not been handled as well as they should have been' and 'unnecessarily delayed' are delightfully vague expressions. It is clear that it is only because the Commissioner wanted to please the authorities of the Finance Department that he expressed himself in the manner that he has done. He could not find more definite expressions to convey the impression that the petitioner was in the wrong. In the confidential report submitted to the Finance Secretary on the 13th of June, 1949 the Commissioner recommends that in the interest of public service reshuffling of the posting of the Assistant Commissioners was necessary and it is after discussing the matter with the Finance Secretary that the Commissioner proposed that the petitioner should be transferred from Calcutta, South Circle to Burdwan and Presidency Circle.

Although the recommendation for transfer was made in June, 1949 no order for transfer was actually issued till the 22nd of

October, 1949 and it was on the 28th of October, 1949 that the order for transfer was communicated to the petitioner. In the meantime, however, the petitioner on the 3rd September 1949 had issued a notice to Kesoram Cotton Mills Ltd fixing the 7th of November, 1949 and onwards for the examination of the books of accounts of the Dealer. But, by reason of the order of transfer, the petitioner was obliged to make over charge of the Calcutta South Circle and to take over charge of the Burdwan and Presidency Circle on the 7th November, 1949. The result was that he had to stop dealing with the assessment files of the Birla Concerns.

It was suggested on behalf of the respondent that it was altogether a wrong approach on the part of the petitioner to ask for manufacturing accounts and other detailed statements of accounts from the assessee without first examining the books of accounts already produced by them. But, it is clear from the affidavit of the Commissioner himself that the books of accounts and other papers produced by the dealer had already been examined by certain Commercial Tax Officers and I do not think that after having received unofficially the communication contained in the Income Tax Department letter of 16th June, 1944 it was something unusual for the petitioner to presume that books of account already produced did not represent the actual state of affairs regarding the sales of goods by the Birla Concerns in their several businesses.

Having regard to the facts and circumstances stated above, I have no hesitation in coming to the conclusion that the delay in completing the assessment cases of the Birla Concerns was due to a genuine desire on the part of the petitioner to detect the evasion of sales tax by the Birla Concerns and the petitioner was not afforded full opportunity to carry out his object of detecting such evasion.

The West Bengal Public Service Commission was consulted about the dismissal of N. C. Roy. The Commission disagreed with the Government and refused to recommend dismissal. The Chairman of the Public Service Commission was once one of the most brilliant men in the I.C.S., but at this time he was physically invalid and mentally weak. He continued in office by sufferance of the West Bengal Government. One of the members was a retired B.C.S. who held the post of Finance Secretary under N. R. Sarker. At the first instance even they refused to agree to N. C. Roy's dismissal. Then came a telephone from the Chief Minister, the file was sent back to them with a further note "*apropos* the telephone conversation!" The recommendation as desired now went out.

N. C. Roy received his letter of removal from Government Service on May 20, 1952.

Officers who had helped in his removal were all rewarded. The Finance Secretary was detected by the Auditor-General to have made an illegal overdraw of his salary to the extent of about Rs 60,000/-. Under a special Government resolution he was not required to pay it back. He was also confirmed in the I.A.S. The Assistant Commissioner of Commercial Taxes who had succeeded N. C. Roy and against whom the Sales Tax Tribunal had passed strictures, was promoted as Additional Commissioner with double the pay he was drawing. The Commissioner of the Commercial Taxes had been promoted as Deputy Secretary, Finance, Government of India. After his retirement from this post, he has been reappointed as the Chief Internal Auditor of

the Life Insurance Corporation of India.

The warning against discrimination in tax collection went unheeded. Tax evasion is bound to increase when people find that not only their hard earned money is being wasted but also big men are going away without paying their due share of the taxes. To Adam Smith's four Canons of taxation a fifth should now be added—satisfaction of the assessee that the tax is well spent and no discrimination in its collection is made.

In 1953, I published a second volume of the *Mystery of Birla House* and indicated how administrative morale goes down even when one single tax collector is victimized and removed from service for his refusal to discriminate in tax collection. The total chaos is only a matter of time. Let even one single lone voice be raised against the coming crash.

CHAPTER II

FINANCE MINISTER T.T.K. AND HIS FINANCIAL POLICY

Edward Hilton-Young wrote, 'An organized State is a great factory in which machines of many different sorts are at work upon various processes. A factory has its engine house, in which is placed the prime mover, the steam or electric engine that supplies power to all other machines. So in the State also there is an engine-house. It is the Finance Department or the Treasury; and in that is placed the financial engine which keeps all the machines of the Government at work, turning revenue into public services, just as a steam engine turns coal into power.' A State which neglects its prime mover brings about its own ruin.

The British Government never forgot this truism during their rule over India. They placed the most capable economist at the helm of the Department of Finance. Men like Sir Basil Blackett, Sir James Schuster, Sir Percy Grigg served as Finance Members of India. The best man with theoretical knowledge and practical experience was recruited and sent down to India to run this prime mover.

Sir Shanmukham Chetty, D.Litt. became the first Finance Minister of Free India. He had a deep knowledge of public finance, and had also a wide experience. He was Chairman of Indian Tariff Board. He was a member of Central Banking

Enquiry Committee. He represented India at the Imperial Economic Conference at Ottawa. He was Chairman, Industrial and Scientific Research Committee. He was India's delegate to the World Monetary Conference. He fell a victim to the Congress Party's financial politics and resigned.

Dr John Matthai, B.Litt. (Oxon), D.Sc. (London) succeeded him. He was a Professor of Economics at the University of Madras ; President of Tariff Board and Director General of Commercial Intelligence and Statistics. He had acquired practical experience in the industrial field as a Director of the Tatas. He became disgusted with the Congress administration of public finance and resigned.

Sir Chintamon Deshmukh, B.A. (Cantab) succeeded Dr Matthai. He was officer on Special Duty, Finance Department, Government of India at the outbreak of the Second World War. He was Secretary to the Central Board of the Reserve Bank of India, became its Deputy Governor and finally was Governor of the Reserve Bank. He represented India at the World Monetary Conference. He was also Governor for India on International Monetary Fund and International Bank for Reconstruction and Development. He differed with the Cabinet on the issue of linguistic redistribution of the States, and resigned.

Then came Mr T. T. Krishnamachari, B.A. (Madras). His theoretical knowledge of economics and public finance ends here. His practical experience is confined to one year's Presidentship of the Madras Mahajan Sabha and agency of a foreign firm dealing in toilet products. Prime Minister Nehru has discovered in him the best economic and financial

talent available in the whole of India. During his one year's tenure of Finance Ministership he has brought the country on the brink of economic collapse. He has publicly declared that logic and taxation do not go together. Economists all the world over know and believe that it is sound logic that must provide the basis of an effective policy of taxation. He has drawn suggestions from the Kaldor report with a statement that he had no time to read it. He has been entrusted with the financial administration of the Second Five Year Plan which has been prepared on the basis of a socialist principle. He has never hidden his view that he is no believer in any doctrinaire policy on the suitability or otherwise of nationalization for the development of Indian Industries. He had no scruple to violate Government of India's Industrial Policy Resolution of 1948 when as Minister of Commerce he permitted the Birlas to enter into contract with a British firm for the establishment of a Steel Plant at Durgapur. He had, however, to beat a retreat.

Mr Krishnamachari has not felt it necessary to keep his own reputation above suspicion and to maintain the impartiality and dignity of the Minister's office.

Instances of nepotism have been ventilated in Parliament. On April 22, 1954, speaking on the Finance Bill in the Lok Sabha, Mr V. P. Nair said: 'In reply to a question I find that 70 persons hold import licence, but in spite of that two more companies have been granted *ad hoc* import licence as a very special case. On April 12 in reply to a question, we came to know that India imports soda ash to the value of Rs 20,74,000 a year of which the Imperial Chemical

Industries' share is Rs 14,50,000. We have a list of names of 70 more importers, but this year, through a very strange procedure, the *ad hoc* licence process, two very peculiar licences have been issued. The first licence was for Rs 99,000, the name of the licensee is T. T. Krishnamachari & Sons, Feroz Shah Mehta Road, Bombay. The other day Mr Krishnamachari told me that if I was not satisfied at his word I was free to apply for remedy to the Prime Minister. That is why I raise this matter in the Lok Sabha. The Prime Minister has said some time ago that new import licences were being issued in order to break the monopoly of some companies. But do you think that the monopoly for breaking a monopoly is the monopoly of a Minister's son? I wish to emphasize this aspect of the case. Sodium Sulphide is another very important raw material for Indian industries. The Minister for Industries and Commerce has admitted that here also one *ad hoc* import licence has been issued. Here also the same accident has taken place. The name of the sole licensee is again T. T. Krishnamachari & Sons.'

Another instance of nepotism was disclosed in the Lok Sabha. The sons of T. T. K. applied for licence to import machinery for the establishment of a fountain pen or fountain pen ink factory. The required machinery would cost Rs 3 lakhs. Applications for licence over Rs 50 thousand requires the sanction of a Departmental Secretary. The Secretary expressed his unwillingness to issue the licence. The Minister's sons then split the application in such a manner that each application was for an amount below Rs 50,000 and did no longer require sanction of the Secre-

tary. The licences were issued accordingly. Dr Meghnad Saha commented,—No doubt you are creating a Socialist baby but you are handing it over to the wolf mother.

These allegations had been made when T.T.K. was holding the portfolio of Commerce. His only reply was—the Prime Minister knows it. The Prime Minister kept silent and took no steps. Even if he makes an enquiry now and compares the prosperity of the Minister's sons before and after T.T.K. assumed office at New Delhi, he may find facts which may be quite revealing.

A man who has thus proved himself not above nepotism, will naturally be looked upon with suspicion in his other activities as well. In his taxation measures we find evidence of discrimination which is as bad as nepotism. His new tax measures have been aptly termed black tax. The main provisions of Capital Gains Tax introduced by Mr Krishnamachari on November 30, 1956, with retrospective effect from April 1, 1956 may be compared with the old Capital Gains Tax:

(1) In the old Capital Gains Tax of 1946-48 introduced by Liaquat Ali, the minimum gain for the purpose of taxation was fixed at Rs 15,000 and the earning for the purpose of taxation under Income-Tax Act was not to include the assessee's capital gains if any. Mr Krishnamachari's Act has lowered the exemption from Rs 15,000 to Rs 5,000.

(2) The rate of the Capital Gains Tax under the old Act for non-companies, was :—

Rs		Rs	
15,000	to	50,000	/1/- per rupee
50,001	„	2,00,000	/2/- „ „
2,00,001	„	5,00,000	/3/- „ „
5,00,001	„	10,00,000	/4/- „ „
over 10,00,000			/5/- „ „

Under the old Act, Capital Gains were assessed separately from other incomes and rates were separate for capital profits and revenue income. The present Act provides that both Capital Gains and revenue income should be added together in order to arrive at the total income both for the purpose of computation of tax and also for the declaration of Dividends. The rate of Income Tax to be applied to the Capital Gains will be the rate applicable to the revenue profits increased by one third of the Capital Gains. A hypothetical example is given below as an illustration:—

An individual's revenue income is, say, Rs 9,000, and his Capital Gain made by the sale of a plot of land during the year of assessment is say Rs 12,000. The rate under Capital Gains Act applied to the latter amount shall be the Income Tax rate applicable to Rs 9,000 plus Rs 4,000 (i.e. one third of the capital gain)=Rs. 13,000. Thus the incidence of capital gain will be much higher on the middle class assessee than the income tax rate applied to his ordinary total income. According to the Old Act, he was not required to pay Capital Gains Tax on Rs 12,000, and the Income Tax on Rs 9,000 was (and still is) Rs 450 only approximately at the rate of 12 pies per rupee.

The tax on Capital Gains will now be assessed through a

different procedure. The rate of the tax will be found out first by adding the income and one third of the gain, in this case, Rs 9,000 + Rs 4,000 = Rs. 13,000. The income tax rate on Rs 13,000 is 14 pies. Therefore the gain on Rs 12,000 will be assessed at Rs. 939 at the rate of 14 pies per rupee.

This illustration shows that according to the Old Act an assessee having an income as above, was not required to pay any Capital Gains Tax, whereas according to the present Act he will have to pay nearly Rs 1,000 on the same amount of Capital Gains. The effect of this incidence will be heavy on the middle class people.

If, on the other hand, a wealthy assessee has a hundred-fold greater income of say Rs 9 lakhs, and makes a capital gain of, say, Rs 12 lakhs, he would have had to pay under the old Act Rs 3,75,000 while under the new Act he will pay only Rs. 3,08,532 on the same quantum of capital gains.

Thus the new Capital Gains Act will benefit the wealthier classes, while it will be detrimental to the interests of the middle class. The declaration made by the Finance Minister in the Parliament that this Finance Act will mop up the spending power of the Capitalists only and that the State will be benefited in the matter of capital formation, is not borne out by facts. The present industrial structure of India depends on middle class investments although the maximum profit is taken away by wealthy capitalists through the Managing Agency system. The new Capital Gains Tax will further hit the already over-burdened middle class.

The concession proposed to be granted under the Capital Gains Tax is only an eye wash in as much as in these days

of inflationary prices any building worth the name can yield in sale, an amount exceeding Rs 25,000. The minimum limit upon which Capital Gains Tax can be levied is Rs 5,000. If an assessee has three houses, the total value of which comes to Rs 30,000 and if he sells one of such houses making a capital gain of Rs 5,000, he will be liable to assessment if his total income including Capital Gain exceeds Rs 10,000. Thus the new tax will hit the middle class people much more than the richer classes.

The scheme of compulsory deposits laid down in the Act will retard the growth of medium scale companies. Funds at the disposal of medium and small companies will be depleted, the freedom of investment and utilization of the same for purposes of expansion will be stifled. Middle class investors will be further discouraged to come forward and invest their savings. This scheme will act as a premium on inefficiency in business management. The more efficiently managed companies will be victimized while the inefficient ones will be left untouched.

The following table illustrates the discrimination on efficient and inefficient companies, in the matter of compulsory deposits:—

<i>Companies</i>	<i>Capital</i>	<i>Reserve</i>	<i>Block Assets</i>	<i>P&L A/c</i>	<i>Average dividend</i>	<i>Provision for Taxation</i>	<i>(in lakhs of Rupees)</i> <i>Deposit payable under new Act</i>
1. Hindusthan Motors (Birla)	498.50	Nil	261.81	5.19	Nil	6.36	Nil
2. French Motors (Jatia-British combination)	30.00	15.88	12.88	5.01	22.25%	49.48	7.31
3. Texmaco (Birla)	140.00	4.63	89.26	9.67	3.75%	1.91	Nil
4. Indian Steel & Wire Products (Indra Singh)	22.26	177.63	23.25	14.83	30 %	292.5	16.22
5. Jaysree Tea (Birla)	30.04	34.25	43.25	0.84	4.6 %	12.5	Nil
6. Hasimara Tea (Davenport)	35.00	40.42	55.13	19.62	41.5 %	52.38	1.25
7. Orient Paper (Birla)	326.83	153.71	270.63	2.56	18.8 %	126.50	Nil
8. Titagarh Paper (Heilgers)	142.92	142.92	204.88	3.59	18.7 %	158.87	20.4
9. Central Coal (Birla)	49.97	Nil	32.07	1.30	0.5 %	Nil	Nil
10. Bengal Coal (Andrew Yule)	130.00	112.00	197.00	5.30	19 %	141.25	5.5

The Hindusthan Motors has an unabsorbed depreciation of Rs 1.5 crores. Income Tax and Dividend will be paid only after this depreciation is made up. It means virtually an indefinite carry forward of loss. There is every reason to apprehend that this colossal loss will never be squared up and the Company will never be called upon to pay either any Income Tax or any Dividend. Suppression of profit has become profitable for a class of Managing Agents. We have exposed in *Mystery of Birla House, Part I*, the technique adopted by this Company for suppression of profits, and N. C. Roy detected the suppression of sales and consequent suppression of profit. This case was not sent to the Sales Tax Tribunal, because it was such a cast iron case that there would be no escape once it was referred there.

The surplus for the purpose of assessment of compulsory deposits will be calculated as follows:—

Income tax, super tax, dividend (according to past year's accounts) and depreciation fund will be added first, the surplus will be calculated after deducting Rs 1 lakh from this total.

From the table quoted above it is clear that better managed companies will have to pay greater amounts of compulsory deposits while ill-managed ones will be left untouched. The greatest beneficiaries of this Act will be the Birla concerns. The better companies will henceforward have depleted reserve capital, and as a consequence their dividends as well as share values will be reduced.

The compulsory deposit plan will affect good companies to an extent which may be illustrated from the following table:

Companies	Fund involved
Tata Locomotive	Rs 10.88 crores
Tata Iron & Steel	„ 5.99 „
Indian Steel & Wire Products	„ 64.77 lakhs
Kumardhubi (Bird)	„ 13.54 „
Metal Box	„ 54.17 „
Indian Copper (Gillanders)	„ 47.26 „
National Carbon	„ 93.37 „
Cheviot Jute (Andrew Yule)	„ 20.00 „
Marshall	„ 1.60 „

About Rs 10 crores may be realized from these few companies alone. Their share value has already fallen.

According to the Finance Act of 1956 a company with a paid up capital of Rs 10 lakhs and declaring a dividend of Rs 4 lakhs had to pay Rs 61,250 as additional super-tax on the dividend. Under the new Act, the compulsory super tax will be Rs 1,07,500. Under latest Bill it will be Rs 86,000. This will be a charge on profits and the dividend will accordingly be diminished. The middleclass share-holders will be discouraged to invest with the result that propensity to save will diminish. Investors holding these shares will be inclined to sell them off when they will find that the yield has gone down. Shares of these companies are considered as investment shares. Middleclass people considered these companies safe and profitable and invested their savings in shares of such companies. As a result of the new tax, not only will the dividend be reduced, but the companies will themselves become weak after yielding half of their Reserve

to the Government. Freedom and opportunity for improvement of good companies will be considerably restricted. The speculators will get their life's chance to acquire large holdings in these companies and send them to the winds after having made their quick gain. Shares of many profitable companies are sold at a premium. Restriction of dividend at 6 per cent will discourage those investors who will find that acquisition of shares at a premium reduce the percentage of yield. The middleclass investing people will be most affected, who as a result of poor return on their investments, will be tempted to encash their shares even at a diminished value and change over to Government Securities. Share market speculators, unscrupulous Managing Agents and their associates and underlings will have a golden opportunity to drive a bargain by acquiring these shares at a considerably lower price ultimately coming to a position of monopolizing the private sector at the cost of the middleclass. Oligopoly in business and industry is worse than monopoly. This is certainly not a step towards socialism but exactly in the reverse direction.

Drastic changes have also been effected in the matter of carry forward of losses. By the amendment of Sec. 24 of the Income Tax Act an assessee not being a company sustaining a capital loss not exceeding Rs 5000 will not be entitled to carry forward such loss and claim the same in subsequent assessment. This will adversely affect not the rich but the middleclass doing business in the small sector. There was no justification for such restriction in as much as an assessee of this category sustaining loss in the first two years, say,

at the rate of Rs 4,999 a year, makes a capital gain of say, Rs 12,000 in the third year will be taxed on the entire sum of Rs 12,000 without any deduction of the accrued loss of Rs 9,998 sustained in the previous two years.

Severe restrictions on dividends have been imposed. There is also a popular clamour for such restriction inspite of the fact that dividends form the least part of the profiteers' profit. Dividend or no dividend, he continues to earn his profit through various transactions and remunerations, legal and illegal, open and covert. The cost of his luxuries like the limousine or the palace is debited to the accounts of the company. All these are possible so long as the Managing Agency system remains in force. Some restrictions have been imposed on this system under the Companies Act of 1956 but attempts have already been started to liberalize them. These Agents hold only a small portion of the shares often below 15 per cent of the total issue, which is sufficient to give them a majority at the ill-attended general meetings. So long as these vices remain in force, restriction of dividend will only mean a disincentive to middleclass investment, without any gain to the industry or the country.

In the current budget year, 1957-58, the exemption limit of personal income tax has been reduced from Rs 4,200 to Rs 3,000. This has been another hard blow for the middle-classes. Substantial relief has however been granted at the topmost slabs of income tax by reducing the highest rate of 91.8 per cent to 84 per cent. The relief at the higher slabs has a progressive character. The following illustration indicates the degree of relief for each slab.

Annual Income

Rs

40,000

45,000

75,000

1,00,000

2,00,000

Relief

Rs

1,000

1,300

2,100

3,600

16,200

The rate of income tax on companies has been raised from 25 per cent to 30 per cent. The super tax (corporation tax) has been increased from 2 as 9 pies (17 nP) per rupee or 17 per cent to 20 per cent. There is no question of refund under any circumstances as regards the aforesaid corporation tax. The new rate thus works out at an enhancement by 3 per cent. The Finance Minister has observed that the increase in the rate of income tax from 25 to 30 per cent is nothing material because shareholders of a company are entitled to credit of income tax paid on their behalf. He has omitted to mention that some of the shareholders may get a refund of the entire amount of the income tax only, some may get a portion of it while there will be a good number of them who may not be entitled to any refund at all.

Tax on dividends in excess of 6 per cent has been enhanced and a heavy tax has been imposed on bonus shares. A tax of 10 per cent has been imposed on dividends between 6 and 10 per cent, 20 per cent on dividends between 10 and 18 per cent and 30 per cent on dividends higher than 18 per cent. Bonus shares will be taxed at 30 per cent. The previous rate of tax on bonus shares was $12\frac{1}{2}$ per cent. Bonus shares are issued out of accumulated profits and

reserves, whether capitalized or not, and as such income tax and corporation tax on them have already been paid. Heavy tax on bonus shares will discourage ploughing back of profits.

Wealth tax proposed on companies will discourage corporate enterprise. The company's assets do not represent the wealth of an individual. A Company is no doubt a fictitious person in the eye of law but its assets represent the sum total of the wealth of different actual persons, many of whose shares in the accumulated wealth of the company may be insignificant. This tax on a company, although different in name, amounts practically to an additional corporation tax.

People have been asked to devote all their energy in production. The present age is one of corporate efforts for production both in agriculture and in industry. Peasant proprietorship is yielding place to collective or co-operative farming. Proprietorships and Partnerships in business and industry is yielding place to corporate efforts. When businessmen have started adopting modern methods of corporate enterprise through the formation of private and public limited companies, the new taxation on companies has come as a sharp rebuff to them. Here is an actual example of how corporate enterprise will be hit under the new scheme of taxation:

A businessman who hates black-marketing and tax evasion was running a proprietorship firm with a capital of Rs 15,000. He audited his accounts by responsible Chartered Accountants. His total sales amounted to Rs 2,01,000 and expenses

were Rs 1,89,600. His net profit was Rs 11,400. He paid Rs 673 as income tax.

In order to place the firm on a modern and scientific basis, he converted it into a Private Limited Company. He will now have to distribute the profit of Rs 11,400 as follows:

	Rs
Income Tax, Surcharge & Supertax	5,871
Dividend Tax	840
Dividend 30 per cent	4,500
Balance carried forward	189
	<hr/>
	Rs 11,400

The maximum rebate which the shareholders may claim is Rs 1417.50 nP i.e., the amount of tax which will not be refunded is Rs 5293.50 nP. The net profit after taxation under proprietorship was Rs 10,727, while under the Limited Company it will be Rs 6106.50 nP.

There is therefore a likelihood of moving away from corporate efforts and going back towards the outmoded proprietorship.

The Finance Minister stated in the Lok Sabha on 15 May 1957: 'As members are aware, shareholders of companies are entitled to credit of income tax paid on their behalf by the company. The net effect of the proposal to increase income tax on companies will not be very significant.'

The so called 'insignificant' character of the burden of taxation is amply illustrated in the example cited above. Its effect on the Stock Exchange has been a steep decline in

business. A spokesman of the Bombay Shareholders' Association attributed the fall in business to the Central taxation proposals.

The Association in a representation to the Finance Minister said that the total fall in the market value of equities was around Rs. 200 crores between August 1956 and June 1957. It also submitted a survey of 22 important companies in Bombay, Calcutta and Madras to show the actual suffering to the investors and stated that investors had suffered a loss of Rs 37 crores in the value of paid up capital of Rs 67.81 crores. On the basis of this survey, it has been calculated that the market value of the investors' assets in the 22 companies mentioned above has declined from Rs 147 crores on 30 November 1956 to Rs 118 crores in May 1957. In June it came further down to Rs 109 crores. Some of the important concerns taken for the survey of the 22 companies were TISCO, IISCO, Bombay Dyeing, Bengal Coal, National Jute, Howrah Jute, Brooke Bond Tea and Cochin Malabar.

The average shareholder of these companies is generally a middleclass investor. The Finance Minister knows it. He himself had stated in the Lok Sabha during the debate on the nationalization of the Imperial Bank, 'Majority of shareholders in Imperial Bank have less than 10 shares. That is the small man, and if we are going to industrialize this country in the future, we want the saving of the small man. When we are thinking about the private sector and providing safeguards for it, I think we have no difficulty at all in assuring the small man that his

savings will be guaranteed,... we shall think he is the backbone of the private sector, because no industrialist and no managing agent, really brings in all his money into the industry, he depends upon the investor. Well, if private sector means something big, somebody who has got large amount of money, and that man has got to be safeguarded. We are not out to do that kind of thing.'

His platitudes for the middle class and his pious indignation for the big guns have no substance in them. In all his actions, through every financial step that he has taken, he has proved that he is on the side of his big business friends and against the poor and middleclasses. Mr. Asoke Mehta gave a correct estimate of the Finance Minister's policy when he said, during the same debate: 'Some handful of big business houses are growing everywhere. No effort is being made to discover new talents, to find out new people of initiative and enterprise. In Shri T. T. Krishnamachari's regime I would like to know how many unknown people, how many able men have been discovered and encouraged. State assistance is being provided and persons nominated on various Board and Corporations, the very persons whose names have been handed over to Income Tax Investigation Commission for tax evasion. You wait till they come out with a clean bill ...'

Had the Congress Government of India decided to implement its own Industrial Policy Resolution of 6 April 1948 and had taken steps to nationalize all basic industries in 1958 in fulfilment of that Resolution, we would have supported it. But the Government has receded from that

bold stand. By amending the Industrial Policy Resolution of 1948 in 1956, they have permitted the private sector to continue indefinitely without fear of nationalization. The new Policy Resolution has been an encouragement to the private sector. The sector can be divided into two distinct sections—good businessmen developing industries on sound lines and unscrupulous speculators killing even established good concerns for quick gain. If the private sector is to remain in the field, it is the first group that should be encouraged and the latter that ought to be sternly put down. But the calculated policy that the present Finance Minister has chosen to pursue is to foster the latter at the cost of the former. More and more power is being concentrated in the hands of a Party Government and this power is being utilized in furtherance of factional interests in the sphere of trade, commerce and industry. During the debate on the Essential Commodities (Amendment) Bill 1957, Mr Nausher Bharucha hit the nail right on the head when he said that the Bill was vague and left the decision to the discretion of the Executive Officer about who was a hoarder; that would lead to discrimination and nepotism. This has become the spirit of most of the measures that now emanate from the New Delhi Secretariat. Patronage can now be directly purchased by contributing company's money to Party Funds.

The latest instances of T. T. K's unusual softness for the unscrupulous speculator is found in the Mundra affair. Due to the speculative activity of their Managing Agents, the Mundras, share values of Jessops and Richardson Crud-das were rapidly falling. The fall became precipitate when

the market came to know that a big cheque issued by the Managing Agents had been dishonoured. The market began to recover when it was known that payment had been arranged. Just at this juncture, the Life Insurance Corporation stepped into the field and saved the Mundras by acquiring shares of some of their companies through private negotiation. Thus Rs 2 crores of public money was utilized for saving a capitalist friend in difficulty. This is what the *Indian Finance* of Calcutta says about the affair:

'The LIC is reported to have made purchases of considerable parcels of shares in the Mundra Group. Some of these shares like Jessops and Richardson Cruddas are certainly attractive at the recent and current price levels and are deserving of inclusion in a well assorted investment portfolios from the point of view of available yields. If the report is true that in addition to the bluechips of the Mundra Group, other shares, not of such high standing, of the same group have been purchased by the LIC, herein may be seen the beginnings of a deliberately executed open market strategy.

'It is freely rumoured that, in respect of one or two such shares reportedly taken up by the LIC, the concerned companies have not issued the balance sheet for a number of years. If this is true, the LIC would ordinarily have kept off from such shares.

'It was known for some time, that shares of the Mundra Group bulked largely among the undigested and floating stocks of the market; and that insecure position in this respect was an obstacle in the way of Stock Exchange recovery. As

a matter of policy, which presumably could have emanated only from the highest official levels, the LIC has stepped in to absorb the floating stocks.

'These operations on the part of the LIC have admittedly helped to improve the technical position of the market. At the same time it is most important to remember that intervention of this kind may often lead to adverse public comment. The essence of open market strategy is that its *bonafides* must never become a topic of controversy.

'The Reserve Bank has conducted open market operations in gilt edged for over twenty years. Crores and crores of stock have been bought and sold. And be it said to the Reserve Bank's credit that never once has its *bonafides* in this regard been questioned!'

Mr T. T. K. cannot evade responsibility for the serious doubt that has rightfully crept in public mind on the LIC's role in coming to the aid of a particular Capitalist which of its own doing had brought itself down into the mire. The Finance Minister ought not to have waited for a public agitation to demand a fullstop at this practice of using public funds for the benefit of private friends.

It is impossible to believe that the two criminal cases started against two companies under the management of the Mundras brought by the Enforcement Unit, Department of Economic Affairs, under his own Ministry had escaped his notice. On the complaint of the Enforcement Unit, three counts of charges under the Foreign Exchange Regulation Act were framed by the Chief Presidency Magistrate, Calcutta, on 29 May 1957. The following press report,

published in the *Statesman* next day, gives an account of the seriousness of the charges. If Mr Krishnamachari had the intention to keep public finance clean, he should have taken serious notice of this report and asked his own departments viz., the Enforcement Unit, the Registrar of Joint Stock Companies, West Bengal, and the Income Tax Commissioners, West Bengal and Bombay to investigate the affairs of this Managing Agency House. He has in his own custody the Report of the Income Tax Investigation Commission. Had he spared a little time to look into its pages he would have discovered that this Managing agent was heavily assessed by the Commission and was proved a tax evader. T. T. K. did nothing of the sort. Instead, the Life Insurance Corporation under his own Ministry, opened its purse wide to accommodate this big speculator without even waiting for the judgment in the case. This is the Press report:

On the complaint of Mr G. Subrahmanyam of the Enforcement Unit, Department of Economic Affairs at Calcutta, under the Ministry of Finance, Government of India, three counts of charges under the Foreign Exchange Regulation Act were framed by Mr M. Mukerjee, Chief Presidency Magistrate, yesterday, against Messrs Brahmapootra Tea Co. Ltd, Calcutta, and four directors of the company.

In another case, a charge under the same Act was framed against Messrs F. & C. Osler (India) Ltd, Calcutta, and five directors of the company. Three other directors were discharged.

The two cases were instituted for alleged contravention of the provisions of the Foreign Exchange Regulation Act in respect of a total amount of £30,000.

The prosecution alleged that two foreign currency accounts were opened in the name of Brahmapootra Tea Co. Ltd, Calcutta in 1952 and 1954 respectively with the Eastern Bank Ltd, London, and three cheques to the total value of £13,000 were sent out of India with letters by the accused to be credited in the two accounts without the permission of the Reserve Bank of India in violation of the Foreign Exchange Regulation Act.

It was further alleged that Messrs F. & C. Osler (India) Ltd, Calcutta, obtained the permission of the Exchange Control Department of the Reserve Bank of India in 1954 for remittance of £17,228 odd to Messrs F. & C. Osler Ltd, Birmingham, England on the representation of the Calcutta office of the company that the amount was necessary for payment of the value of 24 drums of electric cables imported from the Birmingham office of the company. Accordingly, a draft for the amount was issued by the Eastern Bank Ltd, Calcutta, on their London office in favour of "Yourselves" on receipt of Rs 2,30,109 and odd from the accused company. But the proceeds of the draft, according to the prosecution, were not made to Messrs F. & C. Osler Ltd, Birmingham, and the amount in fact was credited to the account No. 2 of the Brahmapootra Tea Co Ltd, with the Eastern Bank Ltd, London, in contravention of the Foreign Exchange Regulation Act.

The accused persons in both cases pleaded not guilty, and the hearing of the cases was adjourned till June 22.

The tax evaders are all well known to Mr Krishnamachari. If his memory fails to recollect thier names, the files of the Income Tax Investigation Commission and the Disclosure Scheme may serve as refreshers. If he nationalizes the Banks with which these persons are connected, virtual mints will be discovered. If he takes powers to open the

public and private vaults huge hoards will be detected. Lately, the Birlas, the Mundras and the Surajmull Nagarmulls have acquired large interests in very big European Companies. If an enquiry, worth the name, be made in these transactions, sources of hitherto undisclosed wealth may be discovered. The residence of the Jalans of the house of Surajmull Nagarmull had been searched by the Customs and the Income Tax Authorities and large seizures were made. Everything seized was however returned after some time. Since then, the Jalans and Bajorias of that house have acquired the Davenport & Co. Ltd, together with a number of big tea gardens of India under their management in addition to the McLeod Group of Companies referred to in the *Mystery of Birla House, Part II*.

The Finance Minister's special inclination towards capitalists of doubtful repute knows no bound. Lala Shri Ram was removed from the Chairmanship of the Industrial Finance Corporation after enquiry by a Parliamentary Committee. Allegations of nepotism made against him were proved which resulted in heavy loss to the Corporation. This gentleman, who had been found incompetent and undesirable to be the head of the IFC, has been appointed Chairman of the Sindhri Fertilisers by the President evidently on the recommendation of the Finance Minister. The amount of money handled in Sindhri will be larger than that the IFC handles.

Krishnamachari's leanings towards a section of the capitalists headed by the Birlas is no more a matter of conjecture. With all his preoccupation in New Delhi he came down

to Calcutta to attend a party given by the Birlas. We bear no personal animosity against any member of this family. We have criticized them because they symbolize all the evils of the Indian Managing Agency system, the continuance of which we consider detrimental not only to the economic interests of the country but a great obstacle to morality in public life without which no nation can maintain its independence. We feel shocked when war profiteers and tax evaders, condemned by the National leaders headed by the Prime Minister of India, are invited to lunch by the President of India and a decoration of the Realm *Padma Vibhushan*, ranking next to the highest decoration *Bharat Ratnam* is conferred on the head of such a family. The Rashtrapati Bhawan news dated 5 November, 1956 contained the following item:

SOCIAL AND PERSONAL

New Delhi, Nov. 5—The following came to lunch: Shri Ghansyamdas Birla, Sri Brijmohan Birla, Shri Lakshmi Narayan Birla, Shri Basant Kumar Birla, Shri Gangaprosad Birla, Shri Madho Prosad and Shri Prabhu Dayal Himatsingka.

All the important members of the Birla family along with their Solicitor had a lunch with the President. As war profiteers they were committed to the Investigation Commission where they were proved to have been the biggest tax evaders of India.

Two and a half years ago, on 3 May 1954, during the debate on the Companies Bill, Prof. H. N. Mukherjee said in the Lok Sabha, 'We know how the Managing Agents

resort to the most dastardly methods in cheating the shareholders, the consumers and the State. I refer in particular to the two volumes of the *Mystery of Birla House*. The publication has been a scandal which the Government has not been able to outlive. I have quoted in this House before what foreign observers have said that if a book of this kind comes out in any country which claims to have a civilized economy, something must be done about it or the Government must come forward and entirely justify whatever has been allegedly done by that firm. Now, that empire of Big Money operates today in such a fashion that the interest of my country is in great jeopardy and the Managing Agency System is the method they are using in order to perpetuate their stranglehold.'

Prof. Mukherjee had referred to Harry Hopkin's comments about the Birlas in his book *New World Arising*. Hopkins writes on pages 283-284:

While I was in Calcutta the Birlas gave at the city's best cinema a private showing of the film they had just had made about themselves. It ran for an hour, and was very instructive... the film embarked on a long tour of Birla stately homes, the stately home at Calcutta, the hill station homes at Mussoorie and Nainital, the Birla Mansion in New Delhi, where Gandhi lived and died—we see the plaque marking the spot in the garden where he was killed at his prayer-meeting, the Birla home in Bombay, where Patel lay—and we see him lying—during his last fatal illness, cared for by the Birlas.

Then the film switched on to a tour of the factories, banks, and insurance companies—and what a tour... And with each factory a new member of the Birla clan presented himself, smiled

across a large desk, bowed and was gone. After which we started on the beneficent foundations, the university at the native village, Pillani in Rajputana, the grandiose Lakshmi Narain Hindu Temple in New Delhi . . . The brain reeled at the number of white rabbits the Birlas drew endlessly out of their round Marwari hats . . .

Yet there were other rabbits—and everyone in that theatre was aware of their existence—which were not brought, and were not likely to be brought, out of that hat. Outside, in the shops, there was on sale a little book by a professor of Commerce called *Mystery of Birla House*. The book told in much detail, with photographs of vital documents, how Birla companies had fraudulently evaded large sums of taxation. It told, furthermore, how a tax collector who had detected this and pursued it had been first compelled to halt his investigations, then suspended. When questions were asked in the West Bengal Assembly, the responsible Minister had made no effective reply. In England, either the Birlas would have had to sue for libel, or the Government would have had to take action. In India, nothing much happened: in India this sort of thing could be accepted as part of the natural order of things. And that was serious.

These exposures did not serve as a deterrent to the activities of this Group of Businessmen. Evasion of Sales Tax and Income Tax were going on, now came the turn of evasion of the Central Excise Duty and removal of valuable foreign exchange out of the country through dubious means. We pointed out again that the Orient Paper Mills, in whose case evasion of Sales Tax and Income Tax had been proved, had begun evading the Central Excise. We reproduce in this book the facsimile of a letter and two invoices in support of the allegation that the Birlas have started evasion of the Central

Excise and diversion of foreign exchanges out of the country.

The removal of N. C. Roy from Government service for the crime of having detected Sales Tax evasion by this House has remained the worst black spot in the history of Civil Administration in India. No effort has been made to remedy this grave injustice after the evasions were proved at the Income Tax Investigation Commission. N. C. Roy survived starvation because he had got himself qualified as a Chartered Accountant and an Advocate of the Calcutta High Court. Mr Nehru complains of dearth of honest and efficient men but he has failed to give protection to this officer about whom even the Leakage Enquiry Tribunal had stated that his removal from service would destroy the morale of the Administration, and had recommended that he should not be removed from service. It was a question of integrity in public service and the Prime Minister of India could certainly come down on the State Government to prevent it from striking such a severe blow at the very root of public administration.

The United Kingdom Government appointed the Lynsky Tribunal to investigate into the allegations made against Belcher, a Parliamentary Secretary. The charges against Mr Krishnamachari are much more serious than those levelled against Belcher. In the interest of purity of public life and integrity of administration, it was the moral duty of the Prime Minister of India to appoint such a Tribunal as soon as charges of nepotism were made more than once against Mr Krishnamachari on the floor of the Parliament. He did nothing. This is serious, very serious.

CHAPTER III

COMPENSATION AND FOREIGN EXCHANGE

In 1952, the Government of India decided to nationalize the airlines. A Bill was drafted and sent to a Select Committee. It was at this stage that we came across instances of how attempts were being made to inflate the assets of the Birla airlines so that a larger amount for compensation can be claimed. We also secured evidence of how funds were being transferred to the U.S.A. through transactions with a firm in that country.

The Airlines Nationalization Bill provided that Rs 4.80 crores will be paid as compensation of which 10 per cent will be paid in cash and the remaining Rs 4.32 crores in bonds carrying an interest of $3\frac{1}{2}$ per cent payable in 5 years. Some of the Airlines were running at a profit. Some at a loss. The Airways India made a net profit of Rs 19 lakhs in three years, set apart another Rs 19 lakhs in depreciation fund and further accumulated a surplus fund of Rs 11.50 lakhs. Their 10 rupee share was being quoted at Rs 13. The Birla Companies were running at a loss.

The Birlas demanded that compensation should be on the basis of market price of assets—the Birla's Bharat Airways had dealings with Air Carrier Service Corporation of 1742 G Street, North West, Washington. We published two invoices of this company in the *Jugabani*, dated May 2, 1953.

They were also produced in the Lok Sabha. In these two invoices, which are reproduced here, it will be found that the Date, Shipment Number, Vendor's Invoice No., P.O. No., Package No., Rec. Memo No., Gross and Net weight of the packages are all indetical in both the invoices, the person certifying both the invoices is the same, but the value quoted in one invoice is exactly double that quoted in the other. This was inexplicable to us. We published these two documents in facsimile and waited for six weeks for an explanation.

After waiting in vain for these weeks, we published another facsimile of a document. It was draft calculation of the final balance sheet with the following instructions:—

- (1) Depreciation to be omitted monthwise.
- (2) Last year's stock.
- (3) Pakistan.

Directors of the Bharat Airways were B. K. Birla, Mangtural Tapuria, B. N. Chaturvedi, and B. P. Sinha Roy. Managing Agents Birla Brothers. Auditor Batliboi & Co. B. K. Birla was Director-in-charge.

In December 1951, the total assets of the company were taken as Rs 1,42,98,344-5-9 pies. This included the following expenses which have been shown as assets:

	Rs	As	P
Preliminary expenses	65,999	15	9
Brokerage	30,000	0	0
Attempt to open a new Line	80,069	7	0
Doubtful debtors	2,26,490	13	1
Depreciation	40,00,000	0	0
Loss	23,98,566	8	5
	Rs 68,01,125	13	3

This invisible asset should be deducted from the total asset quoted above, and after that is done a balance of Rs 74,97,218-9-6 is left. The company had a debt of Rs 59,48,344-5-9. Net assets therefore come to only Rs 15,48,874-3-9.

The following further deductions should also be made from this net asset:—

(1) Loss for the entire year 1952 and half year (upto June) in 1953.

(2) Preference Share value of Rs 6 lakhs. The holders of preference shares were the following Birla concerns—Kesoram Cotton Mill, Birla Cotton and Spinning Mills of Delhi and Jayajirao Cotton Mills of Gwalior.

(3) Stores worth Rs 55,18,476-6-9 were purchased in five years. If the double invoice reproduced above is any indication, it may not be unfair to accept half this amount as representing the correct value for stores purchased.

(4) In the facsimile of the accounts reproduced here, it will be found that the value of store has been inflated by Rs 2 lakhs over that of the year before.

In this way, the shareholders were deprived of their legitimate dividend, income tax revenue suffered and a case was made out for higher compensation on nationalization of the airways.

There has been a tendency to set up purchasing and selling organizations abroad, particularly in the dollar area. In the case of the Bharat Airways it has been shown how double sets of invoices transpire between the firm in India and its purchasing agent in the U.S.A. No action was taken, nor

any explanation given for such suspicious actions even when the facts with documentary proofs were brought to light in a session of the Indian Parliament.

There is therefore reason to look askance at the series of Special Resolutions passed after the introduction of the Companies Act 1956 by a number of Birla firms setting up associates in New York for the purchase and sale of goods including stores, plant and machinery and rendering services such as recruitment of technical personnel etc., and also to have dealings and business connexions with parties all over the U.S.A. Special Resolutions were passed in the Extraordinary General Meetings of the Orient Paper Mills Ltd, on January 15, 1957, Sirpur Paper Mills Ltd, on June 17, 1957, and the Textile Machinery Corporation Ltd, on May 14, 1957 by which the American East India Corporation was appointed their associate in New York. The remuneration payable to the Corporation is as follows:

(i) Commission will be paid for purchase of plant, machinery and stores etc., upto 2 per cent of the invoice price of plant and machinery and upto 5 per cent of the invoice price of stores etc., subject to a maximum of 12,000 dollars (Rs 60,000 approx.) in respect of a single order irrespective of the amounts calculated on the basis of percentage.

(ii) Remuneration will be paid for recruitment of technical personnel upto 20 per cent of the gross salary payable to the technical personnel during the first year of service under the company.

(iii) Payment will be made for the execution of various matters referred and entrusted to them. The actual expenses

incurred, the remuneration of the staff of the American East India Corporation apportionable to such work plus 50 per cent commission on such remuneration, will be paid to the agents, viz., the American East India Corporation in the manner sanctioned by the Directors of the companies here in India.

(iv) The office expenses of the said A.E.I.C. will be paid in addition to their remunerations stated above by the three companies according to a fixed scale, viz., 30,000 dollars or 90,000 dollars.

There will be no difficulty in inflating the values of assets purchased, revenue expenditure increased by charging higher value for stores and machinery, thus increasing cost here and transferring wealth there. Income Tax, Customs and Foreign Exchange Departments can all be hoodwinked through this process of purchase from abroad through the companies' own agents. It is also beyond one's comprehension why the Birlas have adopted this special procedure of purchase of foreign plant, machinery and stores unless, they have something like the above at the back of their mind. The Bharat Airways invoices are sufficient proof that justify such apprehension.

CHAPTER IV

INCOME TAX INVESTIGATION COMMISSION: ITS FINDINGS AND FATE

Reports of the Income Tax Investigation Commission have not been published in full. We have succeeded in getting hold of the proceedings and the report of the Commission. The cross examination of witnesses and the report clearly prove that the Commission had proceeded along the line suggested by N. C. Roy as early as 1948, in his report to the Commissioner of Commercial Taxes, West Bengal. We publish here the Note by Sri Bind Basni Prosad, a Member of the Commission on Birla Cottons Ltd. This Note contains the views and findings of the majority of the Commission and seeks to convert them in favour of the Birlas. This Note alone is sufficient for an understanding of the entire case.

The findings of the Commission were that the following Birla concerns had evaded tax to the extent given below:

Cotton Agents Ltd	Rs 1 crore 10 lakhs.
Birla Bros. Ltd.	Rs 90 lakhs.
Model Knitting Ltd.	Rs 15 lakhs.
R. K. Kejriwal Groups.	Rs 24 lakhs.
Loyalka Groups.	Rs 40 lakhs.
Birla Cotton Mills Ltd.	Rs 2 crores.
Orient Paper Mills Ltd.	Rs 2 crores.

The last two cases have not yet been settled. The reports are at present in the safe cold-storage custody of the Government of India awaiting their decisions on them.

On February 12, 1951, the following newspaper report had been published:

Various methods of tax-evasion indulged in by tax-dodgers are described in the Report on the working of the Income Tax Investigation Commission during 1950 just submitted to the Government of India. The year 1950 happens to be the best year out of the three during which the Commission has been in existence, as of the 337 cases disposed of till the end of the year, as many as 232 cases involving Rs 8.11 crores of concealed income were disposed of in 1950.

The Commission was set up early in 1948 with Mr Justice S. Varadachariar as Chairman and Mr Justice Rajadhyaksha and Mr V. D. Mazumdar as members. Later on, Mr Justice Rajadhyaksha left and Mr Justice P. B. Chakravarti was appointed member in his place.

THE REPORT

The Commission in its report draws the attention of the Government to the various methods employed by tax-evaders and urges that suitable steps should be taken to plug the loopholes in income tax administration. Among the methods employed are:

(a) The device of cash transactions whereby large amounts are kept in cash outside the books of accounts with a view to financing black-market operations. The only way to trace such transactions is through the banks but the Commission regretfully observe that in some particular cases where the banks appeared to be under the control of the very persons whose financial activities seemed to require scrutiny, they were not helpful.

(b) Another method is that the assessee draws cheques for fictitious payments and obtains the money over the counter with a view to making large debts for outgoings which are not really incurred. By this means the cost and purchase figures are inflated so as to decrease the total profits at the end of the year. The Commission suggests that it would be useful if in the case of large consignments of goods or payment of sums of money of a total value of Rs 10,000 or over it was made compulsory for banks to make a note of all such cheques and to maintain proper records of the identity of the persons who cashed the cheques in question.

(c) Inter-relation of the sales-tax and the income-tax provides, the Commission observes, good opportunity to unscrupulous persons to evade both the taxes. The Commission has found that persons who sell articles dissuade purchasers from insisting upon a cash memo on the inducement of not demanding from the customer the sales-tax chargeable on the sale. This arrangement is advantageous both to the seller and to the purchaser as the former is able thus to omit the sales from his books and thereby evade both sales tax and income tax; the latter obtains an immediate benefit of a lesser price and is prepared to collude with the seller in keeping the sale out of the record. The Commission suggests that step should be taken to see that all sales to customers, whereon sales are chargeable, should be made only on a cash memo and any infringement thereof made punishable under law.

(d) Making of large investments in fictitious names is another method which the Commission has found to be in wide practice. The Commission suggests that the law should be amended so that all transfers of shares are registered with the company within three months of the date of such transfer.

(e) 'Buying of loss' is another method which is in wide practice. Under this method a person who has earned good profits in a

particular year purchases from another persons, who has sustained loss the evidence of such loss so that the taxation can be avoided.

In this report, we find that acting on the clue provided by us in our publication in the *Jugabani* dated March 18, 1950, the Commission was in a position to detect evasion along several new lines. In that issue we had published N. C. Roy's Reports dated July 3, 1948 and September 6, 1949 to the Commissioner of Commercial Taxes which suggested the lines along which evasion had taken place and along which he had proceeded to detect them. It was these two Reports which had upset the West Bengal Commissioner of Commercial Taxes but their publication had helped the I.T.I. Commission to a very great extent. The year 1950 happened to be the last year out of the three years of the Commission's existence. Of the 337 cases disposed of till the end of the year, as many as 232 cases involving Rs 8.11 crores of concealed income were disposed of in 1950 alone.

The principal question in the fixation of the Sales Tax on the Orient Paper Mills Ltd, centred round the point whether R. K. Kejriwal was the *benamdar* of the said Mill. The Sales Tax Investigation Commission decided that he was not a *benamdar*, that the sales were effected in Orissa and therefore fixed the Sales Tax at Rs 483 only. But the Income Tax Investigation Commission, proceeding along the lines suggested by N. C. Roy, came to the conclusion that Kejriwal did act as a *benamdar* of the Mill and out of his total concealed income of Rs 17,51,750, Rs 12 lakhs should be taken as the income from paper business and the balance

from other business. As the share of R. K. Kejriwal in paper business was one half, the double of this amount viz., Rs 24 lakhs may be held to be the concealed profits made from the paper business. If the rate of profit made by him in the paper business as agent of the Orient Paper Mills be taken as 10 per cent, the total sales of this Mill to this agent alone amounts to Rs 2 crores 40 lakhs. Sales Tax on this amount must be due to the State of West Bengal as the paper was delivered to the Mills' agent in Calcutta for consumption in this State.

No attempt has been made to realize this huge amount of Sales Tax even after the I.T.I. Commission's Report became available to the West Bengal Government. Full facts about the activities of the Orient Paper Mills and its agent R. K. Kejriwal have been disclosed in the Commission's Report on them attached herewith.

The Kesoram Cotton Mills' case could not be considered by the Commission because its existence came to an abrupt end. But meanwhile the Commission was able to complete the Birla Cotton Spinning & Weaving Mills Ltd case, where evasion tactics were identical with the Kesoram. With this case decided, the fate of Kesoram was sealed. In this case, suppression of production and suppression of profits by sale through subsidiary concerns at a low price were proved. In his letter dated 6.9.49, to the Commissioner of Commercial Taxes, N. C. Roy had mentioned that, among the six methods of evasion enumerated by him the following four were adopted by Kesoram:—

(1) Suppression of production and diversion of the unaccounted productions through non-existent persons.

(2) Sales at a very low price to fictitious registered dealers set up by them.

(3) Setting up of subsidiary concerns with the money advanced from big companies and manipulating purchases and sales through them and subsequently liquidating the concerns.

(4) Wiping away the profits by *fatka* transaction with concerns set up by them.

In the Birla Cotton Case, evasion through these four methods had been proved. The Commissioner's Report in this respect was not unanimous. Justice Viswanath Sastri and Mr Nargolwala signed a majority report which upheld the guilt, while Bind Basini Prasad submitted a separate report in which he tried to explain away the evasion. Bind Basini Prasad's Report is published herewith which gives a complete picture of the whole case. In the majority report, Justice Sastri and Mr Nargolwala had said 'It was laudable on the part of the Birlas to contribute to a charitable object but what they did looks very much like robbing Peter to pay Paul. The shareholders of the assessee never knew that they had earned the merit in this furtive manner.' Justice Bind Basini Prasad had taken exception to 'robbing the revenues'. The whole story will be clear from the report of Justice Bind Basini Prasad. We may infer very reasonably that detection of evasion by Justice Sastri and Mr Nargolwala was possible only because N. C. Roy's report was before them.

Alarmed at the work of the Commission, Surajmall Mohta, a nephew of the Birlas, filed a suit at the Supreme

Court of India challenging the very basis of the constitution of the Commission. The Court unanimously held that Sec. 5(4) of the Taxation on Income (Investigating Commission) Act 1947 and the procedure laid down by it offended Article 14 of the Constitution which guarantees to all persons the equal protection of the laws and was therefore void. A sequel to this decision was the promulgation of a Presidential Ordinance later replaced by an Act of Parliament. The object of this Act was 'to enable investigations to be made into certain cases of tax evasion during war time. A number of such cases has been referred to the Income Tax Investigation Commission under Sec. 5(1) of the Commission Act. A number of other cases was subsequently referred to the Commission under Sec. 5(4) of that Act. As the Supreme Court has held the latter provision to be invalid, an Ordinance had to be promulgated to amend the Indian Income Tax Act so as to provide for the application of the normal machinery to such cases.' In order that there may be no harrassment to small assesseees the Ordinance provides that the amendment now made to the Income Tax Act shall have effect only in those cases where the evasion exceeds one lakh of rupees and the previous approval of the Central Board of Revenue has been obtained for the initiation of proceeding in such cases.

About the time of the judgment of the Supreme Court, the number of tax evasion cases referred to the Commission was stated in Parliament by the Deputy Finance Minister to be 1681 under both Sub-Sections (1) and (4) of Sec. 5, and that the number of cases pending under Sec. 5(1) was 484.

The Commission had, by the Supreme Court judgment, been rendered incompetent to pursue the cases under Sec. 5(4).

Meenakshi Mills filed the next case challenging the validity of Sec. 5(1) of the Investigation Commission Act. The Court held that 'assuming the provisions of Sec. 5(1) of Act 30 of 1947 could be saved from the mischief of Article 14 of the Constitution on the basis of a valid classification, that defence was no longer available in support of it after the introduction of the new Sub-Section in Sec. 34 of the Income Tax Act, which Sub-Section is intended to deal with the same class of persons dealt with in Sec. 5(1) of the impugned Act . . . the result is that proceedings before the Investigation Commission can no longer be continued under the procedure prescribed by the impugned Act.' In the month of December, 1955, the Supreme Court decided two more petitions the facts of which were almost identical but in regard to which different laws applied.

The net result is that the cases which had been under investigation by an expert and impartial separate body like the Investigation Commission, have been entrusted to Departmental Officers. The position of such officers may easily be imagined. Even if some of them had a mind to pursue the cases in right earnest the N. C. Roy case before him is a sufficient deterrent. Not a single one of the cases has been completed since then. The manner of working of the Departmental assessment may be illustrated by a recent decision.

The Kesoram Cotton Mills case which could not be

completed by the Investigating Commission, was referred for decision to the Departmental Officers. The Appellate Assistant Commissioner, Income Tax, West Bengal, has reduced the income Tax demand on Kesoram by Rs 75 lakhs. The Government has the right to appeal against this order upto the Supreme Court. If they do not file any appeal the public will have reason to believe that the case has been hushed up at the instance of the powers that be. There is a risk for the Government to proceed on appeal because in that case many uncomfortable documents may become public, which the Ministers may not like.

In his Report dated 6, September 1949, N.C. Roy had stated that profits were wiped out by *fatka* (speculative) transactions with concerns set up by them. This revelation was fully utilized by the Commission, which finally led to an amendment of Sec. 24(2) of the Income Tax Act in 1955. The amended Section—Sec. 24(2) (i) states, where the loss was sustained in a business consisting of speculative transactions, it shall be set off only against the profits and gains, if any, of any business in speculative transactions carried on by the assessee in that year;

(ii) where the loss was sustained by him in any other business, profession or vocation it shall be set off against the profits and gains, if any, of any business, profession or vocation carried on by him in that year: provided that the business, profession or vocation in which the loss was originally sustained continued to be carried on by him in that year;

(iii) if the loss in either case cannot be wholly so set off,

the amount of loss not so set off shall be carried forward to the following year and so on.

Many changes have also been introduced in the Indian Companies Act particularly in relation to the Managing Agency. We have every reason to believe that our revelations have contributed in no small measure to the fixation of a limit to managerial remuneration, total prohibition for the appointment of an associate as a buying or selling agent of the company in respect of buying or selling operations from any place in India, restrictions imposed in respect of sale, purchase or supply of any property or for rendering of any services between a company and its managing agents or his associate, prohibition of loans to the managing agent. The imposition of these restrictions shows that the Parliament did not place much confidence in the managing agency system whose activities we had exposed through an exhaustive study of one of the topmost Managing Agents.

CHAPTER V

THE REPORT OF JUSTICE B. B. PRASAD ON COTTON AGENTS LTD

The accompanying report of Justice B. B. Prasad, which constitutes the Minority Report, is reproduced here in full because it contains all the arguments for and against the assessee and gives a good picture of the methods of tax evasion. This case was referred to the Commission on April 18, 1951, seven months after the publication of the *Mystery of Birla House*. This Report reveals the following facts:

(1) Abnormally high percentage of cotton waste. The maximum wastage was 24.03%, while the normal wastage should not exceed 15%. The range of wastage in these Mills is much higher than in similar other Mills.

(2) The wastage of cotton was not uniform. It varied from year to year. Under normal conditions, wastage of cotton in the production of yarn should bear a uniform ratio during all the years of production.

(3) Certain process books showing manufacturing account were not produced. It was claimed that these books had been weeded out because they were not considered important for preservation. This is the same plea that had been taken by the Kesoram Cotton Mills Ltd, in reply to N. C. Roy's order for the production of manufacturing account supported by relevant books. The company had stated

that they had been destroyed. The same frantic eagerness to suppress books of manufacturing account is also manifest in the Report.

(4) Losses due to higher waste figures were recorded for years which were the most profitable for the textile industry. It cannot be passed over as merely accidental.

(5) The Rajputana General Dealers Ltd, Jaipur was started in April 1943. Its sponsors were connected with the Birla Cotton and were interested in the management of this Mill. Production figures for the Birla Cotton were suppressed and the suppressed products diverted through the Rajputana General Dealers. The bulk of such transactions were not recorded in the assessee's books.

(6) Although the Rajputana General Dealers and the Birla Cotton were different companies, both of them were under the Managing Agency of the Birla Brothers and the former was conducted by D. P. Khaitan, Birla's General Manager.

(7) During a period of 15 months the turnover of Rajputana General Dealers was Rs 3.17 lakhs of which the suppressed production of the Birla Cotton Mills amounted to Rs 34,36,000.

(8) There was another company named Merchandise & Stores Ltd. The majority shares of this company was held by the Kejriwal Group. This company also dealt in the products of the Birla Cotton Mills.

(9) When hoarding and stockpiling of cloth was prohibited by law, undisclosed production was shown as sold to Rajputana Dealers and disclosed production to the Merchandise & Stores.

(10) The production of the Mill were sold and despatched to customers directly from Delhi. In these transactions, the name of Merchandise & Stores Ltd, was inserted merely as an intermediary. The names of Mahadev Gangaprasad and J. R. Pilani were introduced as disguise. The account books of the Merchandise & Stores Ltd, and the above-mentioned persons were under the control of the Mill. They were withheld from the Commission, just as was seen in the Orient Paper Mills case.

(11) The Mill sold cotton, which was shown as 'rejected' to Rajputana Dealers and Merchandise & Stores, who in their turn resold the same at a high price to Jayajirao Cotton Mills Ltd, Gwalior, another of the Birla concerns and in this way profit was diminished by Rs 20 lakhs.

(12) It was held by the Majority Members of the Commission that the profit of Rs 30 lakhs made by the Merchandise & Stores was in fact the profit of the Mill.

(13) The Mill sold cotton to Birla Education Trust and to the Technological Institute of Textile at Bhiwani at a grossly reduced price. The profit of the Mills was reduced by Rs 13,30,000 through this device. Some portions of the sale price was shown as not realized from the Bhiwani Textile. All these concerns are controlled by the Birlas.

(14) Rajputana General Dealers Ltd did not declare dividend. Their profits were invested in or donated to the following Birla concerns thus wiping out the profits—

(a) 1943-44	Birla Education Trust	Rs 1 lakh
(b)	Invested in Government Securities	7 to 8 lakhs

- (c) 1946-47 Invested in acquiring shares of Central India Investment Corporation at a premium of Rs 90 per share over and above Rs 10 per share value Rs 25,17,000
- (d) Shares in Jaipur Mining Co Ltd Rs 2,50,000
- (e) 31-12-43. Rs 1,50,000 profit earned in 8 months were capitalized by the issue of bonus shares which was considered equivalent to distribution of profit of Rs 4,50,000
- (f) Accepted shares of Pilani Investment Corporation; Rs 10 share was valued at Rs 100.

Bind Basini Prasad, the third Member of the Commission, recommended reduction of evaded income by Rs 97,67,500 on the following grounds—

(i) According to him a distinction should be drawn between the promoters of a company and the company itself. The liabilities of the actions of the promoters in their individual capacities cannot be fixed on the company unless there are strong grounds to do so. Each has its own separate legal entity.

(ii) According to him 'avoidance of tax by legal methods' and 'evasion of tax' should be distinguished. He believed that no tax can be levied while the avoidance has been by legal methods. Tax is attracted in the second case only.

(iii) According to him, destruction of process books for the years 1942 to 1947 may be considered as normal because the assessee could not foresee that the Investigation Commission would be formed.

(iv) According to him the Birlas may or may not have been benefited by the investment of profits made by the Rajputana Dealers and even if they were benefited, it went to them in

their individual capacities. The Mill cannot be held liable for the tax evaded.

(v) According to him, the Mill cannot be held liable for non-production of records and non-disclosure of names of parties on behalf of whom large expenses, e.g., freight, godown rent etc., were incurred; no conclusion can be drawn that these suppressions were made at the instance of and for the benefit of the Mill.

BIRLA COTTON SPINNING AND WEAVING MILLS LTD

NOTE BY SHRI BIND BASINI PRASAD

Member, Income Tax Investigation Commission

With all respect to my learned colleagues, I find it difficult to agree with their findings that the assessee evaded tax under the following four headings—

	Rs
(1) Suppression of production of cloth	34,36,500
(2) Suppressed profits from sale of cotton to the Birla Education Trust, Pilani, and T.I.T., Bhiwani	13,31,000
(3) Suppressed profits from sale of cotton to the Merchandise and the Rajputana General Dealers Ltd, Jaipur	20,00,000
(4) Profits of the Merchandise & Stores Ltd, Jaipur	30,00,000
Total Rs	<u>97,67,500</u>

In this note, I set out briefly my reasons for taking a contrary view on the above points. It is unnecessary to give the facts and evidence in detail. They have already been given in the report of my learned colleagues (hereinafter mentioned as 'Majority report'). My disagreement is only with the inference from the facts. I take up now the above four items seriatim.

2. *Suppression of production of cloth.* The conclusion reached by the majority on this point is based upon the following two findings of facts—

(a) The waste percentage of cotton in 1942 to 1944 as recorded in the books of the assessee is abnormal and wrong. In reality, the waste percentage was much less and the books of the assessee have been manipulated to suppress the production of cloth and to sell it. The normal waste percentage of cotton in the assessee mill should be 15%. The production of cloth attributable to the cotton shown as waste percentage above 15%, is the suppressed production.

(b) That the suppressed production of cloth found its way to Rajputana General Dealers Ltd, Jaipur (hereinafter mentioned as the 'Rajputana'). Its turnover of about Rs 317 lakhs in about fifteen months includes the undisclosed cloth production of the assessee to the extent of Rs 34,36,500/-.

3. The figures of waste percentage of cotton during the investigation period are as follows—

<i>Accounting year</i>	<i>Percentages of waste</i>
1939	17.4
1940	15.1
1941	17.6
1942	24.03
1943	19.1
1944	16.8
1945	10.4
1946	14.1
1947-48	14.7

I agree with the following observation in the majority report—

- (a) 'that the onus is on the Department to establish suppressed production and the extent of such production' (vide the last sentence of para. 30) ;
- (b) 'that variations in waste percentage are caused by difference in the qualities of cotton used in different mixings. It is also true that the same type of cotton produced in different years may give different waste percentages as a result of the effect of seasonal conditions affecting the growth of cotton crop. There may be variation in the percentage of yarn production and waste in relation to the same cotton consumed during different years (vide para. 32);
- (c) that cotton of the superior variety does not necessarily mean that the percentage of waste is lower than in the case of inferior quality' (vide para. 32).

The above conclusions have been reached on the basis of the evidence of expert witnesses examined before the Commission and the result of laboratory works on cotton by various research institutes. It follows, therefore, that from the mere fact of divergence in the percentage of waste from year to year from 1939 to 1947, it cannot necessarily be inferred that the figures have been manipulated and in the years 1942 to 1944 the waste percentage was really less than what is recorded in the assessee's books. To me, the figures given above present intrinsic evidence of their correctness. 1945 was also a year of scarcity of cloth. It was also a year of the seller's market. Nevertheless, I find that in that year

the minimum waste percentage of 10.4 was recorded in the books of the assessee. If the assessee was out to suppress the production of cloth to make secret profits, there was as such motive for it to do so in 1945 as it was during 1942 to 1944. If it was manipulating the figures in its books of account, it should have done so in 1945 also. When in 1945 the waste percentage of 10.4 was shown, it must have struck to those managing the affairs of the assessee, as persons of ordinary prudence, that it was possible that in future this figure might be cited against it and inference may be drawn therefore that in the years in which the waste percentage was at a higher figure, the assessee might be charged with suppression of production. When I have before me the fact that waste percentage can vary from year to year in the same mill on account of a variety of reasons given by the assessee and quoted in para. 38 of the majority report, when I have the fact that in various other mills also waste percentages have varied from year to year (see para. 40 of the majority report), when I read the evidence of expert witnesses, Sarveshree M. Majumdar, Director of Production, office of the Textile Commissioner, Bombay, C. Nanjundayya, Director, Technological Directorate, Indian Central Cotton Committee, Matunga, M. N. Mukherjee, Director of Production, Government of India, Ahmedabad, and Miss S. P. Vaswani, Head of the Statistics Division, Textile Industries Research Association, Ahmedabad, when I look to the waste percentage allowed by the Tariff Board in its report on Textile Industry and also to the conclusions reached by research institutes, like those at Matunga and Ahmedabad, I am driven to the

conclusion that the balance of probabilities is not on the side of suppression of production of cloth by the assessee. To me, it appears that it is just the other way. It is true that the figures of waste percentage of other mills and those arrived at in research laboratories cannot afford a precise standard for measuring the waste percentage in the assessee mill. Nevertheless, they do afford evidence of fairly reliable trends. Results of laboratories cannot be discarded because they worked at small quantities. Laboratory results, throughout the world, in every sphere of industrial activity afford guidance for largescale production too. These textile research institutions whose figures have been produced before us are meant for textile industry. If the results of their labours are of no use for judging the affairs of textile factories, they hardly fulfill the object for which they were established. If the evidence of the experts who guide the activities of these research institutes or who have been appointed by Government to advise on textile industry is of no value, they are not fit to be where they are. I am of opinion that the evidence of the expert witnesses and the results of investigations carried on at these research institutes cannot be brushed aside. It is in laboratories that inventions which revolutionize industrial activities are made.

From the figures given in para. 40 of the majority report, it will be seen that in the Delhi Cloth Mills Ltd the waste percentage in 1946 was 24.3 if the willow waste of 6% is added. In the Raj Kumar Mills, Indore, the waste percentage reached the figure of 23.6 in 1941. In the Indore Marwar United Mills, the figure was 27.41 in 1944 and 26.92 in 1945. In

the Hukumchand Mills, Indore, the figure was 22.68 in 1942. For the mills in Indore there was no incentive for suppression of production because there was no income tax there. Hence, if in 1942 in the assessee mill, the waste percentage was 24.03, it was not a figure which did not occur in any other textile mills. It has been remarked in the majority report that the range of difference in waste percentage in the assessee mill is more than in other mills. From the figures given in para. 40 of the majority report, it will be seen that the difference between the lowest and the highest waste percentage in the assessee mill was 11.43. In Indore Marwar United Mill, this range was 11.12. It cannot, therefore, be said that the assessee mill is alone in showing this range of difference in waste percentage.

4. In the majority report, reference has been made to the non-production of certain process books of the assessee showing day-to-day production. The explanation given by the assessee is that those books were not thought important for preservation and so they were weeded out. At the same time the assessee has produced a 'figure file' containing the results of production compiled almost contemporaneously from the process books. It is not disputed that this 'figure file' supports the waste percentage as alleged by the assessee. The Department, however, assails the genuineness and correctness of the 'figure file'. The 'figure file' was produced before the Commission and I could notice nothing in it to suspect its genuineness. The theory that the process books had been weeded out cannot be summarily repelled. It is true that some mills whose cases have been investigated by

the Commission have produced the process books, but there are others who have not preserved them. In this very case, some information regarding production was asked for by the Authorized Official from the Elgin Mills, and some regarding waste percentage from the Delhi Cloth Mills (see para. 40) but they said that the books were not available and so they could not furnish the information. The assessee says that it maintained the accounts of its working for the following five-fold purposes—

- (1) To keep the accounts of monies received, monies paid and monies due and adequate details of goods received or sold, or services rendered;
- (2) to keep employees' attendance and accounts;
- (3) to prepare and keep figures and statistics relating to work of various types in various manufacturing departments in order to keep a watch on—
 - (a) employees' efficiency
 - (b) machines' efficiency
 - (c) inter-departmental efficiency, and
 - (d) to ensure quick and smooth accomplishment of work, to watch the progress of work done with an eye on economic working and to arrive at the annual results;
- (4) to prepare and supply figures to Government authorities in pursuance of statutory obligations;
- (5) to prepare summary figures considered vital as are put to use in distant future.'

A very large number of books and registers are maintained by the assessee. Their list is given in six typed sheets furnished to us by the assessee. It is appendix G-1 to the written notes supplied by it to the Commission. Some of the

records are of permanent value and they are called principal books of records; others are feeders to permanent records and are called subsidiary books. The permanent records of the years 1939 to 1947 were presented by the assessee to the Authorized Official. The process books fall in the category of subsidiary books as the 'figure file' contains the statistics from the process books in a tabulated form. It is argued that when the compilation existed in the 'figure file', it was not thought necessary to maintain the original process books. I am inclined to accept this explanation of the assessee for the non-production of the process books and to rely upon the contemporaneous book, namely, the 'figure file'—There was no occasion for the assessee to think in 1942 to 1944, that in 1947 this Commission would be established and it will be called upon to produce the original process books at this distance of time. This case was referred by the Government under section 5(4) of Act XXX of 1947 on 28-4-1951.

5. In the majority report, suppression of production of cloth has been held to be only during the years 1942 to 1944 on the basis that in those years the waste percentage was in excess of the normal 15%. It will be noticed, however, that in 1939 when admittedly according to the majority report there was no incentive to suppress production of cloth, as the upward tendency of cloth prices had not commenced and controls had not been introduced, the waste percentage was 17.4 in this mill. Similarly, in 1941 also the incentive was not so strong. Nevertheless the waste percentage in that year was 17.6. Evidently, the waste percentage of 1939

and 1941 has been taken in the majority report as not abnormal and for this reason no suppression of production of cloth has been found for those years. When 17.4 and 17.6 were not abnormal in 1939 and 1941, how can it be said that for the years 1942 to 1944 the normal should be 15%. Emphasis has been laid in the majority report upon selective purchase of cotton by the assessee, but as pointed out in para 3 *supra* cotton of superior kind does not necessarily mean lower waste percentage. The waste percentage depends *inter alia* upon the trash in the cotton and seasonal effects. The assessee contends that the figure of 10.4% is erroneous owing to some mistake in the compilation of figures. In para 33 of the majority report, without accepting this explanation of the assessee, the figure of 10.4% has been discarded as a standard in account of the fact that there may be variations from year to year due to various causes. Nevertheless, for the years 1942 to 1944, a fixed figure of 15% as waste percentage has been taken without any variations. Although in the last sentence of para 44 of the majority report, it is stated that 'a safer basis would be the production of the assessee mill for the years when conditions were normal and there was no incentive to manipulate facts and figures', yet the figure of waste percentage for 1939 has not been adopted as standard.

6. It has been observed in para 45 of the majority report that the 'highest waste losses to the assessee were in the most profitable years for the textile industry and we cannot accept the contention that this was a mere accident'. 1945 was almost as profitable a year as 1942 to 1944; yet the

waste percentage figure in that year touched the rock-bottom. Moreover, waste percentage of 1944, viz., 16.8, is less than the figures of 1939 and 1941, viz., 17.4 and 17.6 respectively. It is stated in the majority report that in 1945, there was a greater vigilance by the textile control authorities of the Government and by that time quota system had been introduced. The introduction of quota system could be no bar for giving up the habit of suppressing production of cloth. On the contrary, as the quota holders and also others wanted more and more of cloth, an unscrupulous cloth manufacturer would try to suppress more of cloth. For the greater vigilance by the Textile Control authorities of the Government, there is no evidence. On the other hand, cases of suppression of production of cloth even in 1945 have occurred and have come to the notice of this Commission.

7. The conclusion as to the suppression of production of cloth by the assessee to the extent of Rs 34,36,500/- arrived at in the majority report on a consideration of the waste percentage figures is reinforced by the finding that the Rajputana General Dealers' Ltd, Jaipur, was started in April 1943, for the purpose of disposal of the suppressed production. The conclusion is summed up in para 66 of the majority report as follows: 'The close association between the assessee and Rajputana, the circumstances in which Rajputana was incorporated, the deliberate suppression of material evidence and the large turnover of Rajputana indicate that Rajputana dealt with cloth production of the assessee mill, the bulk of which at least was not recorded in the assessee's books.'

8. Before I enter into the various reasons given in the majority report for the conclusion reached above, I may state a clear distinction must be made between 'avoidance of tax by legal methods' and 'evasion of tax'. If the first method is adopted, then no tax is leviable. But, if there has been evasion, then tax is attracted. In considering the case of the Rajputana, this distinction must always be kept in view. There is no denying the facts and it is conceded in the majority report that the assessee mill and the Rajputana were two distinct juristic entities. The fact that the sponsors of the Rajputana were those who were interested in the management of the assessee mill or connected with such persons, does not necessarily mean that the activities of the Rajputana were those of the assessee mill. Again, a distinction must be drawn between the incorporators of a company and the company itself. The results of the activities of the incorporators in their individual capacities cannot, in my view, be fastened on the company, unless there are strong grounds to lead to this conclusion. After discussing the case law on the subject in para 50 of the majority report, there occurs the following observation in it: 'Recognizing Rajputana and Merchandise as separate entities and as legal persons, it is open to us to enquire whether they were acting for and on behalf of the assessee as its agents or *benamidars* in respect of cloth sales and whether the sales alleged to have been made by the two Jaipur companies were really made by the assessee in their names.' The conclusion is eventually reached that the Rajputana was a *benamidar* through which the assessee disposed of its suppressed production of cloth.

9. It is necessary at this stage to consider the true import of a *benamidar*. A *benamidar* is a person who lends his name only. The benefits of his ostensible activities as a *benamidar* go in reality to the true owner. The implication of the finding that Rajputana was a *benamidar* of the assessee in the sale of its cloth is that the cloth sold by the Rajputana really belonged to the assessee mill and that its sale proceeds went to the assessee. There is not an iota of evidence to show that any portion of the price realized by the Rajputana from the sale of cloth went to the coffers of the assessee mill. On the other hand, the evidence is to the contrary. In para 68 of the majority report, it is pointed out that though large profits were made by Rajputana, no dividend was declared by it from 1943 to 1947. But a donation of rupees one lakh was made to the Birla Education Trust in 1943-44. On 31-12-1943, a sum of Rs 1½ lakhs out of the profits earned by the Rajputana during the 8 months was capitalized by the issue of bonus shares. The grant of bonus shares to the shareholders was in a way equivalent to the distribution of profits to the shareholders to the extent of Rs 4½ lakhs. It is further in evidence that 7 or 8 lakhs of rupees of the profits of the Rajputana have been invested in Government securities. Further, it appears that in 1946-47, a sum of Rs 25,17,000/- out of its accumulated profits was invested in acquiring the shares of the Central India Investment Corporation, a concern controlled by the Birlas, paying a premium of Rs 90/- per share over and above Rs 10/-, the face value of a share of the newly formed company. Rs 2½ lakhs were invested also in shares of the Jaipur Mining

Co. Ltd, promoted by the Birlas. Padia, the managing director of the Rajputana, added that he made investments of the funds of this concern according to the advice of late Shri D. P. Khaitan. On these facts, towards the end of para 68 of the majority report, the question is put: 'Why when Rajputana was an independent company unconnected with the Birlas or the assessee, should its declared profits not be distributed by dividends; why should they be invested in the shares of Birla concerns and why was consultation with D. P. Khaitan necessary for making the investment?' The question has been answered in the succeeding para 69 of the majority report in the following words, 'We recognize the separate personality of the assessee and the Rajputana and the right of the latter to do what it likes with its funds. Though the companies were distinct legal entities, they were both directed by the Birlas. After hoarding and stock piling was prohibited and the stocks in hand were restricted to three months' production, the accumulated stock of the assessee was shown as sold to Merchandise so far as disclosed production was concerned. As far as undisclosed production was concerned, it was sold by Rajputana. After the quota system became effective, Merchandise and Rajputana ceased to do business in cloth, that is to say, from the latter half of 1944 till the controls were relaxed in 1948.'

10. The majority report goes on to say in para 69: 'The distribution of the profits of the Rajputana shows the real persons for whose benefit it existed and at whose directions it did business. If it was an independent concern having nothing to do with the Birlas or the assessee, there was no reason

why it should not have declared a dividend or why it should have invested more than Rs 25 lakhs out of its profits in subscribing for the shares of another Birla concern paying Rs 100/- for a 10 rupees share even at the time of its incorporation, why it should have depreciated the value of the shares to Rs 5 lakhs, or why it should have accepted shares in another Birla concern, namely Pilani Investment Corporation valuing a share of Rs 10/- at Rs 100/-, or why even these shares were not registered in the name of the Rajputana if really these were its shares.' At the present stage of discussion, I am concerned only in pointing out the fact that the profits made by the Rajputana have not gone, directly or indirectly to the assessee mill. How then can it be said that the Rajputana was *benamidar* of the assessee mill? Only if it can be shown that the assessee mill has benefited by the ostensible activities of the Rajputana, then are we justified in drawing the inference that the Rajputana was the *benamidar* of the assessee mill. The Birlas may, or may not, have benefited from the investment of profits made by the Rajputana. Even if they have been so benefited, the benefit went to them in their individual capacities, and the assessee cannot be held liable for tax on that account. As already stated, a distinction must be drawn between the Birlas and the assessee, registered public company. There is not a shred of evidence to show that the assessee mill has been benefited from the sales of cloth made by the Rajputana. It is not shown that the assessee mill is a shareholder in many of the concerns in which the profits of the Rajputana have been invested. The distribution of the profits made

by the Rajputana points unmistakably, in my view, to the fact that the assessee has not been benefited in any manner by those profits. It is only when the profits accrue or arise to an assessee that he can be taxed.

11. Rajputana may have dealt in the sale of suppressed cloth. But beyond certain circumstances affording grounds for suspicion, there is no reliable evidence to prove that the cloth sold by the Rajputana was the suppressed production of the assessee mill. I would not go by suspicion. If Rajputana has made money by nefarious designs, the same cannot be fastened upon the assessee mill unless a link is established to connect those profits of the Rajputana with the assessee mill. In this case, as already stated above, those profits have gone in the grant of bonus shares, in the purchase of Government securities, in donations to charitable Trusts, and in the investment in shares of certain other companies. The assessee has not been profited. If some of those who are connected with the management of the assessee mill were profited thereby, the assessee cannot, in my opinion, be held liable for the same. If an employee or a manager of a concern commits an offence, the concern cannot be held liable for it.

12. Two outstanding facts which emerge may also be stated here. Firstly, it is to be noted that the Rajputana was incorporated at Jaipur on the 10th April, 1943. Prior to that it could not carry on any business in the sale of cloth. Even so, the finding in the majority report is that the suppressed production of cloth of the assessee during the years 1942 to 1944 was sold by the Rajputana to the tune of

Rs 34,36,500/-. How could Rajputana sell the suppressed cloth of 1942 when it came into existence in 1943? The second noteworthy point is that while the Authorized Official estimated the sale of suppressed cloth of the assessee by the Rajputana at Rs 150/- lakhs during the period commencing from the 10th April, 1943 to 30th June, 1944, the majority report estimates it at Rs 34,36,500/- only and attributes it not to the period mentioned by the Authorized Official, but to the three years 1942, 1943 and 1944.

13. The line of reasoning in the majority report is that as the Rajputana had sales of over Rs 317 lakhs in the course of 15 months (10-4-43 to 30-6-44) following its incorporation and as the bulk of it represented sales of cloth, this could not be possible unless it was suppressed cloth. In view of the relations between those who carried on the activities of the Rajputana and those who managed the affairs of the assessee, the conclusion was drawn that this suppressed cloth belonged to the assessee.

14. As regards the close association between the assessee and the Rajputana, it is pointed out in the majority report that the Rajputana was sponsored by the late Shri Devi Prasad Khaitan in collaboration with Atmaram Padia, as the bulk of the shares were held by the wife of Shri Khaitan. It was also pointed out that other shareholders entered in the registers of Rajputana were not traceable. Shri Khaitan was the director of the assessee company and a power of attorney against of the Birla Brothers Ltd, the managing agents of the assessee. The evidence on record clearly establishes that Shri D. P. Khaitan was in the thick of the

business field. If he, for his own reasons, sponsored the Rajputana, how can the charge be laid at the doors of the assessee that the latter is responsible for the sales made by the Rajputana? The Rajputana may have been indulging in black-market activities and is not placing before the Commission the full facts, but I fail to understand how the assessee, a registered public company, can be held liable for it. The non-production of books of account by the Rajputana has been emphasized on the ground that it is a Birla controlled concern. The Birlas are not assessee in this case and the assessee cannot be held liable for the non-production of accounts by the Rajputana. In *C.I.T. Bombay vs. Trust Corporation*, 1939, I.T.R. 445 the Income Tax authorities called upon a Bombay company to produce the account books of a company in Hongkong with which it was alleged to be closely connected, and on the Bombay company pleading its inability to comply with this requisition, the company was assessed to tax. It was held on a reference, by the High Court of Bombay that there was no evidence to show that the Bombay company was in a position to produce, or cause to be produced, the books of the Hongkong company and the order under section 22(4) was not, therefore, justified and the consequential assessment under section 23(4) was not justified. It is said that Atmaram Padia is a good friend of the Birlas. It may be so, but how for that reason his acts and omissions can cast any responsibility upon the assessee? The fact that 21 shareholders of the Rajputana could not be traced out has also been referred to, and from this the inference has been drawn that the capital of the Rajputana was in all

probability found by the Birlas or other Birla concerns, vide para 51 of the majority report. The books containing the money dealings of the assessee have been produced and there is nothing in them to show that the assessee contributed any share capital of the Rajputana. The Birla may, or may not, have arranged for the capital of the Rajputana, but, as already stated, this cannot fasten any liability upon the assessee.

15. It is then pointed out that the directors of the Rajputana were either friends or employees or relatives of the employees of the Birlas or their concerns. The auditors of the Rajputanas were those who audited the accounts of many Birla concerns. The accounts of the Rajputana were opened in the United Commercial Bank Ltd of whose board of directors Shri G. D. Birla is the Chairman. In my opinion, no adverse inference can be drawn against the assessee from these circumstances. Assuming that the Rajputana carried on black-market activities in the sale of cloth, how can the assessee be liable because its directors were the friends or employees or relations of the employees of the Birlas, or its auditors were those who audited some Birla concerns also, or it opened accounts in a bank sponsored by the Birlas? The United Commercial Bank is now one of the foremost banks in this country. It has got the accounts of a very large number of persons. As a bank, it is its duty to open the account of any one who approaches it and not to look to the source from which the customer brings the money. It may be noted here that when the Rajputana was established, it opened its account first

with the Jaipur Bank Ltd, and it was later that an account with the United Commercial Bank Ltd was opened. It had an account also with the Imperial Bank of India. The auditors, Messrs Singhi & Co. audited not only the accounts of the Birlas but of many other concerns. No community of interest can be inferred because two persons go to the same lawyer, or to the same auditor, or to the same bank.

16. The Rajputana's explanation in regard to the turnover of Rs 317 lakhs in the course of 15 months after its incorporation is that it carried on business not only in cloth (cotton and silk), but also in delivery orders of cloth, in silver and in gold mohurs. It admits that it sold some cloth manufactured by the assessee, but it contends that it was from disclosed production which it obtained from the Merchandise, the selling agents of the assessee. It adds that it dealt in the cloth manufactured by other mills also. In support of the business in delivery orders, bullion and gold mohurs, reliance is placed upon the audit file which was summoned by the commission *suo moto* from the auditors of the Rajputana. Therein we find notes showing that Rajputana was dealing in these articles also. I do not think that the evidence afforded by the audit file can be brushed aside. The Commission, at its own initiative, summoned the audit file. If it had contained a concocted evidence, one would have expected the assessee to have summoned it. On the weight of the evidence produced in this case, I am not prepared to hold that business in delivery orders of cloth was not done by the Rajputana and this theory was set up subsequently to explain away the huge turnover of over Rs 317 lakhs. The large

turnover may be due to the system of accounting also. Instead of entering only the differences in speculative transactions, the full amounts of purchase and sale money might have entered. Reliance has been placed upon certain omissions in the statement of Padia which he previously made before the Authorized Official. But, where there is conflict between oral and documentary evidence, I would prefer to rely upon the latter. The documentary in support of dealings in delivery orders is the audit file. It is true that delivery orders of cloth were never before negotiated and this is not a common practice in the market. But, during the last war, profiteering was so much rampant that people devised ingenious methods to make profits. No wonder, therefore, that when there was so much scarcity of cloth in these years, people connected with the Rajputana thought of making profits, by negotiating delivery orders. Business in delivery orders of jute is well known. The idea of dealing in delivery orders of cloth may have been taken from the jute market. A perusal of clause 5 of the selling agency agreement entered into between the assessee and the Merchandise Stores Ltd (hereinafter mentioned as the 'Merchandise') shows that goods were intended 'to be delivered to the Stores company or its nominee either by actual delivery thereof in Jaipur or by delivering in Jaipur of the relative delivery orders or railway receipts or other documents of title duly endorsed.' No wonder that the delivery orders which the Merchandise received from the assessee were negotiated by it, saving to itself a lot of trouble involved in actually receiving the goods, storing them and then passing them on to the

customers at a time when there was so much transport difficulty.

17. The non-production of the vouchers and invoices etc. of the Rajputana has been commented upon and the inference has been drawn that those vouchers, invoices, etc., are not being produced because they would connect the cloth sold by the Rajputana with that manufactured by the assessee. The Rajputana may have its own reasons for the non-production of these documents. The omission on its part to produce them should cast no liability upon the assessee.

18. The fact that the Rajputana paid Rs 52,404-6-6 for customs and railway freight, godown rent of Rs 796-7-3 and the insurance premia of Rs 4,000/- and debited Rs 4,469-12 for wastage has also been referred to in the majority report in support of the finding that the Rajputana received its supply of cloth from the assessee. These charges, in my opinion, only establish that the Rajputana was receiving goods from outside which, for reasons best known to it, it is not disclosing, but it cannot be taken as sufficient evidence of the fact that the supplier was the assessee mill. Suspicion cannot take the place of proof.

19. From the E.P.T. file of the Rajputana, it appears that a list of stock of cloth on hand on the 30th June 1944, was made. In it there were 26 varieties of cloth bearing distinguishing numbers as stock on hand. It was admitted on behalf of the assessee that 13 of those items included in the stock consisted of the cloth of the assessee mill. From this the inference has been drawn that the Rajputana was

dealing in cloth manufactured by the assessee mill. The Rajputana does not deny that it dealt in the cloth of the assessee mill also. It contends, however, that it dealt in a comparatively small quantity of the cloth manufactured by the assessee and obtained from its disclosed production from the Merchandise and adds that it dealt in the cloth of so many other textile mills also. Hence, the discovery of this small quantity of cloth manufactured by the assessee mill in the stock of the Rajputana does not necessarily lead to the inference that it was in the cloth of the assessee mill only that it was doing business and that all this was the suppressed cloth of the assessee.

20. It may be argued that taken individually, the above circumstances may not prove the charge of sale of suppressed cloth of the assessee by the Rajputana, but cumulatively they do lead to that inference. I have given my anxious consideration to the matter from this aspect also. There is no evidence at all of despatch of any cloth by the assessee from Delhi to the Rajputana at Jaipur by rail or by motor truck. For the carriage of *cotton* from Delhi to Gwalior the Authorized Official was able to get the evidence of a motor conductor, but no such evidence could be found for taking *cloth* from Delhi to the Rajputana. Nor could any evidence for this be found from the railway records. There is no direct evidence of any witness to prove that the Rajputana sold cloth worth about Rs 34 lakhs manufactured by the assessee. The very finding in the majority report that out of a turnover of about Rs 317 lakhs, the suppressed cloth of the assessee was to the extent of about Rs 34 lakhs only, is a

positive proof of the fact that the Rajputana dealt largely in commodities other than cloth of the assessee and was doing speculative business also in bullion and delivery orders, as alleged by it. It is clear from this that it was started not only to sell the suppressed cloth of the assessee, but to carry on other business also. That it was not a mere shadow of the assessee is established from the fact, that it had an office in Jaipur, it had bank accounts in which transactions of about Rs 42 lakhs passed, it paid railway freight and customs, godown rent, insurance premia and debited about Rs 4,000/- for damaged cloth. Its accounts were audited and its balance sheets are before us. The non-production of the records by the Rajputana to show precisely the nature of its activities is a factor which ought to go against it and not against the assessee. I am unable to draw from this omission on the part of the Rajputana the inference that the assessee suppressed the production of cloth and sold it through the Rajputana. Assuming that the Rajputana was selling suppressed cloth, how does it follow that such suppressed cloth was of the assessee mill. It may be the suppressed cloth of some other textile mill of this country and for reasons, best known to it, it does not want to expose it. If there had been more than the recorded production, there would have been corresponding increase in the consumption of stores and coal and greater payment of wages. Entries in the account books of the assessee do not show this. Average production per spindle and loom in the assessee mill does not compare unfavourably with other good mills.

21. On a careful consideration of the case and on

weighing the evidence and probabilities, the conclusion at which I reach is that suppression of cloth produced by the assessee has not been established. The destination of the funds of the Rajputana does not connect the assessee with its transactions. There is no reliable evidence of the fact that the assessee suppressed any cloth manufactured by it and sent it to the Rajputana for sale. At all events, even if it be held that from the circumstances discussed above the conclusion about the suppression of the cloth by the assessee is deducible, it cannot be said that such an inference is free from reasonable doubt. If it is so, the benefit of doubt must go to the assessee.

SALE OF COTTON TO THE BIRLA EDUCATION TRUST
AND T.I.T. BHIWANI

22. In para 102 of the majority report, it has been held that the assessee sold cotton to the Birla Education Trust (hereinafter mentioned as the 'Trust') and the Technological Institute of Textile at Bhiwani (hereinafter mentioned as 'T.I.T. Bhiwani') at a gross under value and thus showed a reduced profit in its books to the extent of about Rs 13,30,000/-. This amount is, therefore, sought to be added to the income which escaped tax in the hands of the assessee.

23. The first ground for this conclusion is that the provisions of section 42(2) of the Income Tax Act are attracted. One of the essential ingredients for the application of section 42(2) is that there must be close business connexion between the resident and non-resident persons. For establishing such a connexion, the following reasoning is given in para 102 of the majority report:

'The assessee mill as well as the Birla Education Trust were both managed by the Birlas, though there were a few other persons associated with them both in the management of the mill and of the Trust. The Birlas were the owners of Birla Bros. Ltd, the managing agents of the assessee and some of them were also Trustees of Birla Education Trust which owned the Bhiwani Mill. The assessee bought yarn and other products of the Bhiwani Mill and sold its cotton to it. On account of the close connexion between the assessee and the Birla Education Trust through the Birlas, the sale to Bhiwani was made at an abnormally low price resulting in a substantial diminution of the assessee's profit. The object was to show an appreciably smaller taxable profit for the assessee and pass on the difference between the sale price and the market price to the Trust. It is no doubt true that the Birla Education Trust and the Birlas as trustees were different from the Birlas as individuals. It is also true that Birla Bros. Ltd, though its shareholders were all members of the Birla family, was different from the Birlas. It is equally true that the assessee, a limited company, was a different person from Birla Bros. Ltd, or the Birlas, though the latter either directly or through their holding companies control the assessee and the Birla Bros. Ltd who were the managing agents. Though the law treats them as separate persons, the fact remains that they are all closely connected by reason of a common control abiding in the Birlas. The sales to Bhiwani could be brought within the ambit of sec. 42(2) of the Income Tax Act.'

24. As regards the close connexion between the Trust

and the assessee, the evidence is that in 1941-42 the Bhiwani Mill sold some yarn and charkhas to the assessee. Our attention has not been drawn to any other transaction between the Trust and the assessee after 1941-42. We then come to 1945-46 when the cotton was sold by the assessee to the Trust. Close business connexion, in my view, implies the continuity of a connexion. Where there has been a break of about 3 years between the two transactions and save the transaction in 1941-42 no other business dealings took place between the assessee and the Trust, I am of opinion that it cannot be held that there has been a close business connexion between them.

25. When once the distinct juristic personalities of the assessee and the Trust are conceded, by the mere circumstance that some of the persons managing both the concerns belong to the Birla family, it cannot be inferred, in my opinion, that there is a legal connexion between the two. Viscount Maugham in *Oddam Press Ltd vs. Cook* (1941 I.T.R. Supplement 92, 109) said: 'Limited companies who carry on business are separate taxable persons and the profits and gains of their businesses are separate profits and gains for purpose of their income tax. This is nonetheless true if one of the companies should be the parent company and the other or others may be its subsidiary of which the shares are held or owned by the parent company.' Likewise Phillimore J. said in *Kodak Ltd vs. Clark* (4 T.C. 549, 582): 'A company may control another company or an individual, or an individual may control a company; but it does not necessarily follow that because the individual controls the

company, or the company controls the company, or the company controls the individual, that the business carried on by the person or company controlled is necessarily a business carried on by the controller.' In *Foster & Sons vs. Inland Revenue* 1 Q.B. 516, it was held that 'the legal entity created by registration is a corporate body distinct from the persons composing it. If a firm transfers its assets to a corporation, consisting exclusively of the partners, the company is nevertheless, for the purposes of income tax a new body.'

26. For the reasons given above, I am of opinion that section 42(2) of the Income Tax Act does not apply because the vendor and the vendee of the cotton were two distinct personalities and there was no close business connexion between them. The fact that there were some common persons who managed both is of no relevance in the eyes of law. It is unnecessary for me to discuss other authorities cited in para 50 of the majority report on the question of distinct legal personalities of corporate bodies.

27. The second reason given in the majority report for holding that the sum of Rs 13,30,000/- escaped taxation is given in para 105 as follows:

'Here we have the case of a public company whose affairs are managed by a private limited company owned by the members of the Birla family. Cotton of considerable value forming part of the stock of the company was sold according to our findings, at a gross undervalue, much less than the market price at the time of sale. The sales were not *bona fide*. They were not legitimate commercial

transactions nor were they effected in the ordinary course of business. . . . The sales of cotton in favour of the Bhiwani Textile Mill were effected for the benefit of the Birla Education Trust of which the Birlas were the founders and trustees. The position is that the company's stock has been sold, but only a fraction of the market price has been credited in the remaining portion being gifted away to the purchasers for reasons wholly foreign to the assessee's business. This is not a case of withdrawal of a part of its stock by the company as in Kikabhai's case but a sale of its stock to outsiders. This is not a case of a *bonafide* though imprudent transaction of sale. The sale has been so deliberately arranged as to show only a part of the market price as realized by the assessee, the remaining part being remitted or given away in favour of the purchasers not because they could not pay, nor because such remission could be even remotely advantageous to the business of the assessee, but because the Birlas wanted to gain an indirect advantage for themselves or other concerns in which they were interested.'

28. The first point for consideration is whether the transactions of sales of cotton to the Trust and T.I.T., Bhiwani, were *bonafide*. The Birla Education Trust is a charitable institution. The Technological Institute of Textiles at Bhiwani is also an education institution where 200 boys receive training in textile production. The Bhiwani Cloth Mills Ltd was formerly a concern of the Birlas, but subsequently the company was wound up and the Mill was transferred to the Birla Education Trust. No moral turpitude attaches even if cotton was sold to these two institutions at

less than market rate. In paragraph 100 of the majority report, the following observation occurs:

It was laudable on the part of the Birlas to contribute to a charitable object but what they did looks very much like robbing Peter to pay Paul. The shareholders of the assessee never knew that they had earned merit in this furtive manner.

In this extract evidently the reference is to robbing the revenues. As regards the share holding, attention may be invited to para 2 of the majority report from which it would appear that the shares of the assessee company are mostly held by the members of the Birla family or their nominees and even if a loss occurred to the shareholders of the assessee company by the sale of cotton to these two institutions, it was passed on mostly to the members of the family.

29. The assessee contends that the sale of cotton was not at an undervalue. It assigns reasons for selling the cotton at the price at which it did. It says that the cotton was damaged or of low quality. The explanations given by it have been discarded in the majority report. Assuming that those explanations are not acceptable and a loss has occurred to the assessee, the question arises whether or not it was a business loss. The assessee carried on the business of manufacture and sale of cloth, and for that purpose it has to buy cotton. It is incidental to the business carried on by it to sell cotton which is in excess of its requirements, which is not of the requisite quality, or which has been damaged. If the assessee sold surplus cotton to these institutions, it was not a transaction which was foreign to its business. If these transactions were imprudent, the question then arises

whether the loss arising thereby can be disallowed.

In Eastern Investment Ltd vs. Commissioner of Income Tax, West Bengal. (XX 1951, ITR, p. 1), it was held that the only question that should be considered is whether the transaction was voluntarily entered into in order indirectly to facilitate the carrying on of the business of the assessee and was made on the ground of commercial expediency. As already pointed out, the sale of cotton by the assessee was to facilitate the carrying on of its business, because there was no point in keeping the stock of surplus cotton and thereby suffering dead loss. Their Lordships, in the Eastern Investments' case, observed: 'The test for the present purposes is not whether the other party benefited, nor indeed whether this was a prudent transaction which resulted in ultimate gain to the appellant'. As in that case, so in the present one, there is no suggestion of fraud or underhand dealing.

31. Then there is the case of *Kikabhai Premchand vs. Commissioner of Income Tax (Central), Bombay*, (1953, 24 I.T.R. p. 506). The facts of that case are almost parallel with those of the present one. What happened in that case was that the assessee was a dealer in silver and shares, withdrew some silver bars and shares from the business and settled them on certain trusts in which he was the managing trustee. In his books he credited the business with the cost price of the bars and shares so withdrawn, the market price being higher. The Income Tax authorities held that the assessee derived income from the stock-in-trade thus transferred and assessed him on a certain sum being the difference between

the cost price of the silver bars and shares and their market value at the date of their withdrawal from the business. It was held by the Supreme Court that on income arose to the assessee as a result of the transfer of shares and silver bars to the trustees. There was no suggestion in that case, as there can be none in the present one, that the bars and shares were withdrawn from the business otherwise than in good faith. It was contended on behalf of the State that as the bars and shares were brought into the business, any withdrawal of them from the business must be dealt with along ordinary and well-known business lines, namely, that if a person withdraws an asset from a business he must account for it to the business at the market rate prevailing at the date of the withdrawal. Further, the contention was that if the act of withdrawal at a time when the market price was higher than the cost price, then the State would be deprived of a potential profit. Both these contentions were replied. The following observations in the judgment of that case are important:

As regards the first contention, we are of opinion that the appellant was right in entering the cost value of the silver and shares at the date of the withdrawal, because it was not a business transaction and by that Act the business made no profit or gain, nor did it sustain a loss, and the appellant derived no income from it. He may have stored up a future advantage for himself but as the transactions were not business ones and as he derived no immediate pecuniary gain the State cannot tax them, for under the income tax act the State has no power to tax a potential future advantage. All it can tax is in some profits and gains made in the relevant accounting year.

It was conceded that if these assets had been sold at cost price the State could have claimed nothing, for a man cannot be compelled to make a profit out of any particular transaction. It was also conceded that if the silver and stock had lain where they were, then again there would have been no advantage to the State because the appellant would have been entitled to enter their closing values at cost at the end of the year. The learned Attorney-General even conceded that if they had been sold at a loss the appellant would have been entitled to set that off against his other gains, but he said that that is because all those are business transactions and that is the way the law deals with such matters when they occur in the ordinary course of business. But, he argued, when there is a withdrawal and no sale or its equivalent, the matter is different. As this is a business, any withdrawal of the assets is a business matter and the only feasible way of regarding it in a business light is to enter the market price at the date of the withdrawal and whether that happens to favour the assessee or the State is immaterial. We do not agree.

32. Evidently, those who were in charge of the management of the affairs of the assessee sold the cotton at an undervalue because they were prompted by charitable motives also and not purely by profit motives. At least, it can only be regarded as an indiscreet transaction. This indiscretion on their part should not render the assessee liable for tax.

33. It is stated in the majority report that the transaction was in a sense gift of the difference between the sale price and the market price of the cotton to these charitable institutions. The transaction was neither in form nor in substance a gift. It was a sale at an undervalue. If the market price for such cotton was higher on the dates of the sales. In the

Provident Investment Co. Ltd. vs. Commissioner of Income Tax, Bombay City, (1953 24 I.T.R. p. 33) Chagla, C. J., after referring to certain decisions of the Privy Council and the House of Lords, observed as follows:

'The authorities make it clear that it is not competent to the Court to look to the substance of the matter independently of the real transaction arrived at between the parties. If a transaction creates certain legal rights and obligations, then the Court must give effect to those legal rights and obligations and must not, overlooking these rights and obligations, try and fathom what was in substance the nature of the transaction entered into by the parties. The Court is not confined merely to looking to the form of the transaction. It is open to the Court to ignore the form and ascertain the real nature of the transaction. But while it is open to the Court to ignore the form, it is not open to the Court to overlook or to ignore the true legal position that arises out of a document or documents in which the parties have chosen to embody the transaction or transactions. The Court may even look at the surrounding circumstances in construing a document, but the Court in looking at the surrounding circumstances must be anxious all the time to determine what is the true nature of the transaction. It has also been stated that the same result may be achieved by two entirely different transactions and it may be that whereas one transaction could be subjected to tax the other might not be and it is not open to the Court to tell the assessee that he should rather have entered into a transaction which subjected him to taxation rather than a transaction which permitted him to

escape taxation. A citizen is perfectly entitled to exercise his ingenuity so to arrange his affairs as may make it possible for him legally and lawfully not to pay tax, and if his ingenuity succeeds, however reluctant the Court may be to acknowledge the cleverness of the assessee, the Court must give effect to the letter of the taxation law rather than strain that letter against the assessee.'

In the present case, the transaction was nothing but a sale. If a dealer sells a commodity to a friend at a concessional rate, the dealer cannot be taxed for the difference between the market rate and the concessional rate. Discretion must be given to those engaged in business to determine, subject to statutory provisions, the prices at which they should sell their goods to their customers. If the theory that sales should be only at the market rates is pushed to its logical ends, then it follows that every transaction entered into by a dealer has to be examined whether or not it was at the market rate. That would be an impossible position. Even the market rate is not a fixed figure. It is our frequent experience that rates of commodities vary from place to place, and even at the same place from shop to shop.

34. The fact that in Kikabhai's case the assessee was an individual is hardly relevant. The principles governing the question are identical, whether the assessee is an individual or a corporate body. If the principle that a person cannot be compelled to make a profit out of any particular transaction, as laid down in Kikabhai's case, is to be accepted, I cannot see how the difference between the price at which the cotton was sold by the assessee and its market rate can be taxed.

As in that case, so in the present one, there was withdrawal from the stock at less than the market rate.

35. For the reasons given above, I would hold that the sum of Rs 13,30,000/- held in the majority report to be the difference between the price at which the cotton was sold to the Birla Education Trust and T.I.T., Bhiwani, and the market rates, is not liable to tax.

SALE OF COTTON TO THE MERCHANDISE AND THE RAJPUTANA

36. In 1946, the assessee sold 47,819 maunds and 20 seers of cotton alleged to be cut of its rejected stock through its Jaipur branch to the Merchandise and the Rajputana at Rs 10/- per maund. The latter two concerns then resold it to the J. C. Mills Ltd, Gwalior, at Rs 15/- per maund. In the majority report, the plea that this cotton was unusable has been rejected and it has been held that these transactions, the assessee deliberately diminished its profits to the extent of Rs 20,00,000/- and thus escaped tax upon it. It has, therefore been held that the same should now be assessed to tax. The provisions of section 42(2) of the Income Tax Act have been held applicable to these transactions also.

37. So far as the Merchandise is concerned, there was close business connexion between it and the assessee, and I agree that section 42(2) applies. But between the Rajputana and the assessee, there was no such connexion. It has been held above that the Rajputana was distinct from the assessee in the eyes of law. From the mere fact that persons managing the two were connected to a certain degree,

or that they directly or indirectly derived profits from both, it cannot be inferred that there was close business connexion between them. If two concerns are managed by a common agency, but one has no dealings with the other, it cannot be said that they have a close business connexion between them. Hence, on authorities cited in paras 25, 30, 31 and 33 *supra*, and for reasons given therein, I would hold that even if the assessee suffered loss in the sale of cotton to the Rajputana, the same cannot be brought to assessment. As section 42(2) is not attracted to the sale of cotton to the Rajputana, I would hold that so much of Rs 20,00,000/- as is attributable to sale of cotton to the Rajputana is not liable to tax.

MERCHANDISE PROFITS

38. From paras 93 to 95 of the majority report, it will be seen that the findings as regards the Merchandise are as follows:

(a) The object of its incorporation was to show that profits from the sale of cloth manufactured by the assessee accrued to a non-resident, to pass the profits of the assessee from its disclosed production through it to investments in the shares of Birla concerns, to drastically reduce the value of such shares without any valid reason and eventually to convey the profits to holding companies like the Pilani Investment Corporation.

(b) Despite the sole selling agency for the sale of cloth manufactured by the assessee to the Merchandise, the sales of the recorded production of the assessee were "mostly" made by the assessee in Delhi, the name of the Merchandise being shown as sellers, that the goods were despatched from Delhi to customers

in different parts of the country, that the old selling agents who had been selling the goods of the assessee till 1943 continued to sell it, that in order to disguise this certain Jaipur Intermediaries like Mahadev Ganga Prasad and J. R. Pilani were introduced as concerns which during 1943-44 supplied the goods to the old selling agents, that the account books of these concerns and the Merchandise which were under the control of the assessee were deliberately withheld to avoid exposure of the real facts, that the sole selling agency agreement, dated 15-4-1943, was not a *bona-fide* business arrangement, and that a sum of Rs 30,00,000/- was the profit disguised and shown as having been earned by the Merchandise when, in truth, it accrued to the assessee.

(c) That even if the selling agency agreement was real, and not nominal or sham, its object was to arrange the business of the assessee to show that it earned only a very small profit, very much smaller than it would have earned if it had sold the goods ex-mill and that Merchandise made large profits practically for doing no work. All that the Merchandise did was to make entries in its books and to open a banking account at Jaipur. This is a clear case attracting the provisions of section 42(2) of the Income Tax Act.

39. I agree with the finding in clause (a) in para 38 *supra*. Even so, can it be held that the profits of Merchandise are the profits of the assessee? Whatever may have been the motives behind, after the incorporation, Merchandise became a distinct legal entity, and its profits can be treated as the profits of the assessee only if it be held that it was acting as the *benamidar* of the assessee. The destination of its profits is almost identical with that of the Rajputana. The Birlas or their associates may, or may not, have been

benefited by its profits, but it is clear that no part of its profits benefited the assessee directly or indirectly. I have discussed the *benamidar* theory in paras 9 to 11 *supra* while dealing with the case of the Rajputana. The same reasoning applies *mutatis mutandis* to the Merchandise. I am unable to hold that the Merchandise was a *benamidar* of the Assessee.

40. As regard the finding in clauses (b) and (c) of para 38 *supra*, I agree that the selling agency agreement, dated 15-4-1953, was not a *bonafide* business arrangement. Nevertheless section 42(2) does not apply to the whole of the profits made by the Merchandise. That section would apply only to that portion of the profits of the Merchandise which was 'less than the ordinary profits which might be expected' to have arisen to the assessee by selling the cloth ex-mill. Now, there were two periods in which the Merchandise sold the cloth—firstly when there was no price control, and secondly after the introduction of the price control. On the introduction of the price control, the assessee charged the Merchandise not at the rate mentioned in the selling agency agreement, but at the ex-mill controlled rates. It is thus clear that during the price control period, the assessee could not make more profits than what it actually did from the sale of cloth to the Merchandise. Indeed, if it charged more than the controlled rate, it would have been liable for prosecution. Of course, during the period there was no price control and the assessee was at liberty to fix the price of its cloth, the assessee is chargeable to income tax in respect of the profits on sale of cloth which it could have made by

selling it ex-mill. I am of opinion that section 42(2) applies only to the sale of cloth passed on to the Merchandise during pre-price control period. It is easy to determine the quantum of such profits from the entries in the books of account.

41. It may be noted that not all the cloth was despatched by the assessee to the customers after the agreement of 15th April, 1943. Some of the cloth did go physically from Delhi to the Merchandise at Jaipur. This is implicit in the majority finding that 'mostly' the recorded production was sold in Delhi by the assessee (vide para 94). It implies that there was some cloth which was sold by the Merchandise also. Further it may be noted that according to clause 5 of the agreement, delivery could be made also by the handing over of the delivery order. Section 33 of the Sale of Goods Act provides for this mode of delivery. Handing over of the delivery order is one of the recognized modes of delivery.

42. The suppression of account books and other papers by the Merchandise should not, in my opinion, fasten any liability upon the assessee. The two are distinct legal entities. The Birla Bros. Ltd which manages the assessee, does not manage the Merchandise. The Merchandise was physically at Jaipur. It had an office there where its employees worked. It actually sold some cloth there and operated upon bank accounts in Jaipur. It cannot be said on evidence that it only made book entries and did nothing else.

Sd. BIND BASNI PRASAD
28-12-1953

BEFORE THE INCOME TAX INVESTIGATION
COMMISSION

(Camp) Calcutta, the 29th June, 1953.

R. C. Nos. 831/37-43: *Ramkumar Kejriwal Group.*

PRESENT

SHRI A. V. VISVANATHA SASTRI *Chairman.*

SHRI BIND BASNI PRASAD *Member.*

SHRI S. D. NARGOLWALA, I.C.S. *Member.*

(Messrs. B. P. Khaitan and B. S. Sharma appeared for the
assessee)

Sagarmal, son of Rameswar Jajodia, aged 57, service at present in the Paper Distributors Ltd, and residing at No. 19, Balmukund Makar Road, Calcutta, solemnly affirmed.

Chairman:

Q. Are you employed by Ramkumar Kejriwal & Co.?

A. I was.

Q. How long were you in their employment?

A. From 1939 to 1945.

Q. What have you been doing after 1945?

A. Then I joined the United India Paper Trading Co.

Q. After that what did you do?

A. After that I served in the Vijay Laxmi Trading Co. Ltd and now I am in the service of the Paper Distributors.

Q. Who were the proprietors of all these concerns? Was it Ramkumar Kejriwal?

A. Ramkumar Kejriwal was the director of all these concerns.

Q. Was the United India Paper Trading Co., under which you took service, a concern of Ramkumar Kejriwal?

A. Yes.

Q. Was Vijay Laxmi Trading Co. Ltd, under the control and management of Ramkumar Kejriwal?

A. Yes.

Q. Is Paper Distributors Ltd, under the control and management of Ramkumar Kejriwal?

A. Yes.

Q. May I take it therefore that you have been in charge of paper business transacted by Ramkumar Kejriwal in one name or another from 1939 to date ?

A. Yes.

Q. Were accounts of this Paper business kept regularly from 1939 onwards?

A. Yes.

Q. Are the accounts of Ramkumar Kejriwal from 1939 to 1945 available?

A. No.

Q. Why?

A. I burnt them.

Q. When did you burn them?

A. I don't remember the date exactly, nor do I remember the year or the month.

Q. Did anybody direct you to burn the books?

A. I do not remember exactly who ordered me to burn

those books of accounts. It was either Ramkumar Kejriwal or Bilasrai Kejriwal.

Q. Are the accounts of United India Paper Trading Co. available?

A. No.

Q. Are the accounts of Vijay Laxmi Trading Co. Ltd, available?

A. Yes.

Q. From what year to what year are the accounts of Vijay Laxmi Trading Co. Ltd, available?

A. They are available from 1.4.1946.

Q. Do you know anything about the business done by Bengal Laxmi Paper Trading Co.?

A. Yes.

Q. When did it start business? Is it still running? What was the business done by that Company?

A. It started business on 1.4.1946. It dealt in Paper. It is not still running.

Q. When did it cease to do business?

A. It stopped functioning from 31.3.1950.

Q. Was this business the business of Ramkumar Kejriwal?

A. Yes.

Q. Are the book of this Company now available?

A. The account books of 1946-1947 and 1947-1948 do not exist, but these of 1948-1949 and 1949-1950 are still remaining.

Q. Were the books of 1946-1947 & 1947-1948 of Bengal Laxmi Paper Trading Co., also destroyed by you?

A. Yes.

- Q. What is the period for which the books of Vijay Laxmi Trading Co. are available.
- A. They are available for all the years from 1.4.1946.
- Q. Are the books of Paper Distributors Ltd, available and, if so, for what period?
- A. They are available from 1.4.1946.
- Q. Can you tell us any reason why and when the books of Bengal Paper Trading Co., for the years 1946-1947 and 1947-1948 were destroyed according to you, and why the books of Vijay Laxmi Trading Co., and Paper Distributors Ltd, for that period were not destroyed?
- A. I can give no reason why they were not destroyed. I only carried out the orders given to me.
- Q. Was any reason given to you why the books of Bengal Laxmi Paper Trading Co., for the years 1946-1947 and 1947-1948 have been destroyed?
- A. No reasons were communicated to me for the destruction of these account books.
- Q. Did you yourself destroy all these books which are said to have been destroyed by you at one sitting?
- A. I myself burnt them with my own hands on one day only.
- Q. I put it to you that this destruction of accounts, if true, should have occurred somewhere in 1949 or 1950. Is it not so?
- A. I cannot say this because I do not remember the year in which the destruction of the books took place.
- Q. Where was Ramkumar Kejriwal & Co. carrying on business? Was it in 104 Old China Bazar?
- A. Yes.

Q. Were accounts of Ramkumar Kejriwal correctly and properly kept or were any bogus entries made?

A. They were correct throughout.

Q. Were Ramkumar Kejriwal, the United India Paper Trading Co., Paper Distributors Ltd, Vijay Laxmi Trading Co., and Bengal Laxmi Paper Trading Co., the sole selling agents of Orient Paper Mills Ltd?

A. Yes, so far as Bengal is concerned. About other places I do not know.

Q. Was Ramkumar Kejriwal & Co. doing business in No. 13 Jackson Lane?

A. No.

Q. Was Ramkumar Kejriwal doing business in 14/2 Old China Bazar Street?

A. No.

Q. Was he doing business in 62 Amherst St., or in 14/2 Old China Bazar Street?

A. There was a shop in Amherst Street, doing business in waste paper, but I do not know the number of that street in which the shop was housed.

Shri Bind Basni Prasad:

Q. What was the name under which the business of waste paper was carried on?

A. Under the name of Waste Paper Depot.

Chairman:

Q. Who was in charge of this waste paper business?

A. I used to look after it.

Shri S. D. Nargelwala :

Q. Who was the Manager? What was his name?

A. There was no Manager there. One or two up-country employees used to purchase waste paper and bring them to the depot.

Chairman:

Q. Was Ramkumar Kejriwal in the habit of suppressing sales and putting them in *benami* names?

A. No.

Q. May I take it, therefore, that for all sales made by Ramkumar Kejriwal, the invoices, the entries in the accounts and every other record would show that the sales were made only by Ramkumar Kejriwal and no one else?

A. Yes.

Q. Has Ramkumar Kejriwal & Co. sold paper in any name other than its own name?

A. No.

Q. Do you know of any concern styled Bengal Paper Supply Co.?

A. No. I do not remember. (The witness answered this question after some thinking).

Q. Who was in charge of the sales of paper by Ramkumar Kejriwal?

A. I was in charge.

Q. So, in the usual course of business, you would know the names of persons having dealings with Ramkumar Kejriwal. Is it not so?

- A. I cannot remember the names of all. If any particular names are put to me, and, if I remember about them, I shall say so.
- Q. Do you remember if there was a company styled Rajputana Paper Agency, Calcutta with which Ramkumar Kejriwal had dealings?
- A. I do not remember any such dealer.
- Q. Have you had any dealings with Manmath Nath Seal in Old China Bazar Street?
- A. I do not remember. He might have been a small party.
- Q. Do you remember having any dealings with T. D. Mullick, Amherst Street?
- A. I do not remember.
- Q. Do you remember if you had any dealings with Paper Supply Co., 14/2 Old China Bazar Street?
- A. I do not remember.
- Q. Do you remember the name of any customers?
- A. I know many of them.
- Q. Could you please name them?
- A. Vulcan Trading Co. Ltd, Western India Match Co. Ltd, Kassipur Co. Ltd, P. C. Kundu & Sons, Bholanath Dutta, National Tobacco Co. of India Ltd, Mukherjee Dutta & Co.
- Q. Have you had any dealings with S. N. Ghose & Sons?
- A. Yes.
- Q. Have you had any dealings with Basu & Bros.?
- A. Yes.
- Q. Where were they doing business?
- A. China Bazar Street.

- Q. Have you had any dealings with Bose of Harrison Road, Calcutta?
- A. I don't remember.
- Q. Have you had any dealings with Paper & Board Supply Co.?
- A. Yes.
- Q. Where?
- A. China Bazar Street.
- Q. Is it not in Chittaranjan Avenue?
- A. We supply even now. They are doing business in China Bazar Street, and not in Chittaranjan Avenue.
- Q. Have you had any dealings with Narain Prasad Dhandhanian?
- A. Yes.
- Q. Where?
- A. At Bhagalpur.
- Q. Have you sold to R. Mukherjee & Sons, 14/2 China Bazar Street?
- A. I have sold goods to them, but I don't know their address.
- Q. Do you know G. D. Jhawar?
- A. Yes, I have sold goods to him.
- Q. In which year did you sell goods to him?
- A. I have sold goods to him in 1943, 1944 and 1945, but it may be three years or more.
- Q. What would roughly be the price of goods sold to Jhawar in a year?
- A. I sold of great or large value. It may be for Rs 1½ Lakhs, Rs 2 Lakhs or Rs 3 Lakhs per annum.

- Q. Where was his shop?
- A. His shop was in Clive Row.
- Q. Was it not in 21/B Canning Street?
- A. It was not in Canning Street. It was in Clive Row.
- Q. Was he doing any other business?
- A. Yes. He had other business such as hessian.
- Q. Were Ramkumar Kejriwal or other companies or business which you have referred to, selling paper of the Orient Paper Mills Ltd?
- A. Yes. They were selling paper of other mills also.
- Q. Was Ramkumar Kejriwal selling paper of other mills besides paper of Orient Paper Mills?
- A. No. Ramkumar Kejriwal was not selling paper of any other mills except Orient Paper Mills.
- Q. Was Vijay Laxmi Trading Co. selling paper other than paper of the Orient Paper Mills?
- A. Yes.
- Q. Would it appear in the books?
- A. Yes, it will appear in the books.
- Q. Was Paper Distributors Ltd, selling paper other than that of Orient Paper Mills?
- A. Yes.
- Q. Similarly, was Bengal Laxmi Paper Trading Co. selling paper of other Mills also?
- A. No.
- Q. What is the commission allowed to you for the sale of paper of Orient Paper Mills?
- A. Sometimes, it was $3\frac{1}{2}\%$, sometimes it was 4% , and sometimes it was 5% .

- Q. Was there no agreement in writing at any time?
- A. I have not seen any agreement. My employers would know about it. All I can say is that sometimes the commission was $3\frac{1}{2}\%$, sometimes it was 4% and sometimes it was 5%.
- Q. Was any payment made by Orient Paper Mills to Ramkumar Kejriwal besides commissions in respect of sales of paper?
- A. No.
- Q. Have you been maintaining the account books of Ramkumar Kejriwal?
- A. Yes.
- Q. Have you also been maintaining the books of United India Paper Trading Co., Vijay Laxmi Trading Co. Ltd, Paper Distributors Ltd, Bengal Laxmi Paper Trading Co.?
- A. Yes.
- Q. Have you destroyed accounts books prior to the one occasion when you say you destroyed the books of 1944, 1945, 1946, 1947 and so on?
- A. I did not burn any books before this one occasion.
- Q. Did it not strike you as very strange that on one fine morning your proprietors should have asked you to burn the books?
- A. I felt no surprise at the order.
- Q. Did you ask your proprietor as to why they were giving the order for destruction of the books?
- A. No, I did not ask them.

- Q. Is it not considered inauspicious by the marchants to burn their books by fire?
- A. I don't consider it as inauspicious. But there are persons who believe in one way or the other.
- Q. How many day-books and ledger in respect of the paper business are kept in a year?
- A. Three books.
- Q. Did you keep sales book separately?
- A. It is not kept separately. Sales are recorded in the *Nakal Bahi*.
- Q. Can I take it that these three books are comparatively of small sizes? Could each of them be about an inch thick?
- A. Yes. The books were sufficient for the whole year.
- Q. Were these books destroyed recently on account of this pending investigation?
- A. No.
- Q. Do you know to whom the Orient Paper Mills belongs?
- A. Birla Bros. Ltd.
- Q. How long have you been selling paper of the Orient Paper Mills?
- A. From 1939 onwards.
- Q. Do you know if Ramkumar Kejriwal and Birlas are very good friends?
- A. How can I know?
- Q. Did Ramkumar Kejriwal trade under the name of Paper Supply Co., Rajputana Paper Agency or Bengal Paper Supply Co.?
- A. No.

- Q. Can you tell us the several banks in which Ramkumar Kejriwal had account?
- A. United Commercial Bank, Central Bank and Allahabad Bank.
- Q. Can you tell us the banks in which Ramkumar Kejriwal had account in the years 1939 and 1949?
- A. At that time, the account was not in the name of Ramkumar Kejriwal. It was in the name of Orient Paper Mills. The account might have been in the Central Bank or in the Allahabad Bank.

BEFORE THE INCOME TAX INVESTIGATION COMMISSION

(Camp) Calcutta, the 23rd July, 1953.

R. C. Nos. 831/37-43: *Ramkumar Kejriwal Group*

PRESENT

SHRI A. V. VISVANATHA SASTRI	<i>Chairman.</i>
SHRI BIND BASNI PRASAD	<i>Member.</i>
SHRI S. D. NARGELWALA, I.C.S.	<i>Member.</i>

(*Messrs B. P. Khaitan and B. S. Sharma appeared with Shri Rampratap Fajodia*)

Nandlal, son of Ghuwalewala, aged 48, residing at 184 Cross Street, solemnly affirmed:

Chairman:

Q. Have you been employed under Bilasrai Kejriwal?

- A. Yes.
- Q. How long have you been so employed?
- A. Fifteen years.
- Q. What was your salary in 1943?
- A. Rs 300/-.
- Q. Have you anything to do with the business of Radhakishan Ridhkaran?
- A. There was a firm of the name of Radhakishan Ridhkaran in which I had three annas share.
- Q. When was that firm set up?
- A. It was started in 2001.
- Q. Is it right to say that it was set up on 18.12.43 ?
- A. I cannot remember the English date.
- Q. How long did it work?
- A. About sixteen to eighteen months.
- Q. What was the nature of business done by Radhakishan Ridhkaran during these eighteen months?
- A. It dealt in shares. It did not deal in cloth.
- Q. Who told you that it did not deal in cloth?
- A. Nobody had told me. But, I do not remember its having done any cloth business.
- Q. Are there any books of that firm now available?
- A. Yes.
- Q. What was the share of the profit for three annas?
- A. I got about Rs 18,000/- to Rs 20,000/-.
- Q. Have you made a return of this sum of Rs 18,000/- to Rs 20,000/-?
- A. I have not declared this amount in my individual return where I have declared only my salary.

Sri S. D. Nargelwala :

Q. Where have you declared this amount of Rs 18,000/- to Rs 20,000/-?

A. I have filed two returns, one in one place and another in another place. One return was filed in the salary circle V(A) and another return was filed in the Dist. 1(i).

Q. Did you declare the sum of Rs 18,000/- to Rs 20,000/- in your return filed in Dist. 1(i) ?

A. I have got some receipt with me of this amount.

Chairman :

Q. Have you paid tax?

A. Some tax has been paid, but I do not know on what amount of income the tax has been levied.

Q. Where have you invested this sum of Rs 18,000/- or Rs 20,000/-?

A. Some I have spent away and some I have deposited. I have deposited the rest with the Bengal Jute Bailing Co., Ltd, which belongs to the Kanoria.

Q. When did you make the deposit?

A. I have deposited the sum in two or three instalments, but I do not remember in which years.

Q. Have you received any interest?

A. Yes.

Q. Where was the initial deposit made and what was the amount of that deposit and in what name?

A. First deposit was of Rs 5,000/- but I do not remember the date.

Q. In whose name were the deposit made?

A. In my own name.

Shri S. D. Nargelwala:

Q. Have you received the money or is it still there?

A. The money is still there.

Chairman:

Q. Have you shown the interest received from the Bengal Jute Bailing Co., as income in your return?

A. In the return which I am going to make, I will declare it.

Shri Bind Basni Prasad:

Q. This share of three annas in the firm of Radhakishan Ridhkaran is alleged to be that of Bilasrai and not yours. Is it a fact or not?

A. I was made a working partner. (After a considerable pause, witness stated as follows : The three annas share was made out in my name).

Q. Who was the real owner of the amount of profits based on the three annas share in the firm of Radhakishan Ridhkaran?

(Witness again hesitates to answer this question.)

Q. Who is the real owner? Is it Bilasrai or is it yourself?

A. (After a pause, witness says, 'I was the owner of the profit representing the three annas share.)

Q. If there has been a loss, you would have been liable to pay in respect of the three annas share. Is that not so?

A. Yes.

Chairman:

Q. I find that your ledger in the books of Radhakishan Ridhakaran that a sum of Rs 1,800/- is credited as your salary for a year and this sum is withdrawn on 8.12.1944. I further find that a sum of Rs 6,282/- is credited both for cash deposit and for profit and this sum is left intact at the end of 1944 and carried over to the next account. Was this sum of Rs 6,282/- your money or was it the money of Ridhakaran Kejriwal?

A. I deposited Rs 4,000/- regarding the profit, I withdrew it, but I do not know then I withdrew it. I was given salary at the rate of Rs 150/- per month by Radhakishan Ridhakaran.

Q. Do you say that this three annas share was in addition to the salary of Rs 150/- per month?

A. Yes.

Q. Were you also drawing salary at this time from Bilasrai Kejriwal?

A. Yes, I was drawing a salary of Rs 300/- from Bilasrai Kejriwal.

Q. Have you declared the salary of Rs 150/- per month in your return?

A. Yes. I have included it in the return in which I have mentioned my profit.

Q. Have you any other deposit besides the deposit in the Bengal Jute Bailing Co.?

A. No.

Shri Bind Basni Prasad:

Q. Do you realize that it was against the law to file two

separate returns for the same period and that this would render you liable for prosecution?

- A. This is not right. I received a notice from Dist. 1(i) and filed a return in accordance with that notice.

Chairman:

Q. Are you selling the goods of Model Knitting Industries Ltd ?

A. Bilasrai Ramkumar sells the produce of Model Knitting.

Q. Are you working in Bilasrai Ramkumar or have you any connexion with it?

A. At present I am working in the business of Ridhkaran Kejriwal, but formerly I was working in the firm of Bilasrai Ramkumar.

Q. Was Bilasrai Ramkumar the sole selling agents of Model Knitting?

A. They were not the sole selling agents. The Model Knitting also sold their products directly.

Q. What would be the weight of a dozen gunjis?

A. It ranges from 2 or $2\frac{1}{4}$ Lbs. to 7 or 8 Lbs.

Q. Are you selling gunjis which weigh 7 or 8 Lbs. per dozen?

A. Mostly, gunjis weighing 2 to 3 Lbs. per dozen are sold in the market, but I have sold a few gunjis weighing 7 Lbs. or $7\frac{1}{2}$ Lbs. per dozen.

Q. What was the price of a dozen gunjis of 36" when you were selling?

A. At the time when I was selling, the price per dozen gunjis of 36" was Rs 12/- or Rs 14/-.

- Q. What was your commission on the sales?
 A. 2%.
 Q. Was it fixed or was it varying with different types of goods?
 A. On web cloth we used to get commission at 2% but on ready made gunjis we used to get commission at 4%.
 Q. Was web cloth bleached or unbleached?
 A. Mostly, the web cloth was bleached.
 Q. Were you also selling unbleached cloth?
 A. Yes, mostly bleached and sometimes unbleached.

Secretary,
 Income tax investigation commission.
 25.7.53.

BEFORE THE INCOME TAX INVESTIGATION COMMISSION

(Camp) Calcutta, the 29th July, 1953.
 R. C. Nos. 831/37-43: *Kejriwal Group*

PRESENT

SHRI A. V. VISVANATHA SASTRI	<i>Chairman.</i>
SHRI BIND BASNI PRASAD	<i>Member.</i>
SHRI S. D. NARGELWALA, I.C.S.	<i>Member.</i>

(*Messrs. B. P. Khaitan and B. S. Sharma appeared for the assessees*)

RAMPRATAP JAJODIA'S EXAMINATION CONTINUED

Chairman:

Q. I want to clarify one or two matters in connexion with

the evidence you have already given. Do you say that 15,000 shares of Birla Jute Mfg. Co. Ltd, were purchased by Ramkumar Kejriwal on 12.2.1945?

A. Yes. That is clearly written in my book.

Q. Are you aware of this transaction personally?

A. I do not know personally.

Q. Are you in the habit of making false entries in your books?

A. No.

Q. Did you send these 15,000 shares of Birla Jute Mfg. Co. Ltd, with blank transfer forms and the Hundi drawn by you on Chiranjilal Durka to the United Commercial Bank Ltd, Calcutta, in February, 1945?

A. It appears so from the books.

Q. Are you not aware that the Hundi together with the blank transfer forms and the share were presented to the United Commercial Bank?

A. I do not know about this personally.

Q. Who is it that knows this personally?

A. It is only I who should know about it.

Q. Would you please tell us when these shares first came into the possession of Ramkumar Kejriwal?

A. I cannot say this from memory, but I can say from the books.

Q. Are the books kept under your direction and control?

A. Yes. It is so.

Q. Are the entries in your books correct?

A. Yes. They are correct.

- Q. Are you the chief manager of Ramkumar Kejriwal's share department?
- A. Yes.
- Q. Is it or is it not the fact that all share transactions are done with your knowledge?
- A. It is so. Sometimes, the transactions may occur without my knowledge but I come to know about them soon thereafter.
- Q. In this particular case, did you get the shares together with the transfer forms and did you present them to the United Commercial Bank Ltd, with Hundi drawn on Chiranjilal Dhurka?
- A. I do not remember, but from the books it appears that it is so.
- Q. Who has written the entries in the books relating to this transaction?
- A. These entries appear to be made in the handwriting of Shriniwas Poddar who was in our employment. He is not in our employment now.
- Q. Do you check these entries.
- A. We do not check these entries.
- Q. So, you cannot vouch for the correctness of these entries. Is that what you say?
- A. I say that the entries must not be false, although I do not check these entries.
- Q. Am I to take it that you know nothing personally about this transaction of 15,000 shares?
- A. Just as the financial side of these transactions is entered in the financial books, so the physical side of the

transactions, namely who bought the shares, how they were delivered and to whom they were delivered etc., is entered in the share Roker which are no longer available, personally, "I do not now remember the movements of these shares.

Q. May I take it that with reference to 10,000 shares of Kesoram Cotton Mills Ltd, you have no personal knowledge of the transaction of sale to Brijlal Kejriwal?

A. I do not remember this transaction also personally.

Q. The only reason why you say that 10,000 shares of Kesoram Cotton Mills Ltd, were purchased by Ramkumar Kejriwal on 5.5.1944 for Rs 1,80,000 and odd is that there are entries made to that effect in the books. Is that so?

A. I am giving this information only on the basis of the books.

Q. Is there anybody in Ramkumar Kejriwal who can speak with personal knowledge to these transactions of purchase of 10,000 shares of Kesoram Cotton Mills and 15,000 shares of Birla Jute Mfg. Co. Ltd?

A. Apart from myself, there is nobody else who would have personal knowledge.

Q. Who received these shares along with blank transfer forms and who drew up the Hundi?

A. The hundis are written by my Bangali babu and I sign the hundies.

Shri S. D. Nargelwala:

Q. Who was your employee at that time in the share department? Who took delivery of the shares?

A. Sometimes I used to take delivery. Sometimes, Shrinivas Poddar used to take delivery of the shares and sometimes our Bengali babu also used to take delivery of the shares.

Q. Do you keep any registers of the Hundis drawn by you?

A. No. I do not keep a register of Hundis drawn by me. After it is paid it is attached to the bill.

Chairman:

Q. I put it to you that your story of your sale of these shares to Brijlal Kejriwal is untrue and the entries made in your books to that effect are false. What do you say to that?

A. The entries are not false.

INCOME TAX INVESTIGATION COMMISSION

Report on the Kejriwal Group

R.C. No. 831/37	...	M/s Ramkumar Kejriwal
R.C. No. 831/38	...	„ Ramkumar Kejriwal
R.C. No. 831/39	...	„ Bilasrai Kejriwal
R.C. No. 831/40	...	„ Nawal Kishore Kejriwal
R.C. No. 831/41	...	„ Harkishore Kejriwal
R.C. No. 831/42	...	„ Chandra Kishore Kejriwal
R.C. No. 831/43	...	„ Ridhkaran Kejriwal.

PRESENT

SHRI A. V. VISVANATHA SASTRI

Chairman.

SHRI BIND BASNI PRASAD

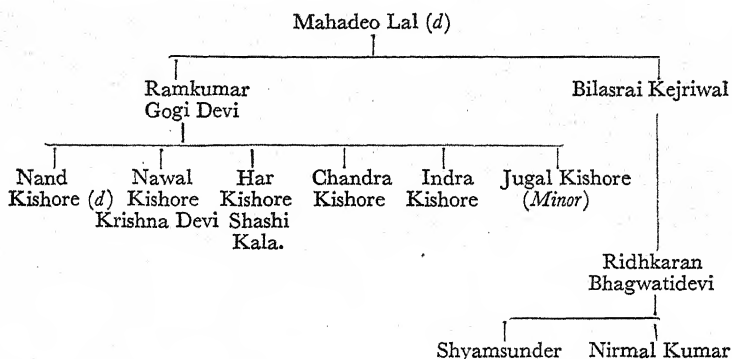
Member.

SHRI S. D. NARGELWALA, I.C.S.

Member.

This report deals with the Kejriwal group of cases which are seven in number (R.C. No. 831/37 to R.C. No. 831/43). They were all referred under section 5(4) of Act XXX of 1947 as in the course of investigation into the Birla Group of cases, the Commission found *Prima facie* to believe that the Kejriwal had also evaded payment of taxation.

2. The assessees in all these seven cases belong to the same family and their relationship *inter se* will appear from the following pedigree:



3. Upto 1940-41, assessment to income tax were made in the status of a Hindu Undivided Family consisting of Lala Ram Kumar and his brother, Lala Bilasrai, and their respective sons. On the 11th November, 1939, a partition took place in this family and by an order, dated the 1st April, 1942, passed under section 25A of the Income Tax Act, the partition between the two brothers was recorded. The house in Amherst Street, the business of share at Stock Exchange styled as Ram Kumar Kejriwal & Co., 7 Lyons

Range, Calcutta, and the Jute business as member of the East India Jute Association styled as Ram Kumar Kejriwal, 2 Royal Exchange Place, Calcutta, were allotted to Shri Ram Kumar Kejriwal. The Belur Garden, the business styled as Har Kishore Kejriwal as a member of the Calcutta Hessian Exchange, the selling agency of Model Knitting Industries Ltd, styled as Bilasrai Ramkumar, 184 Cross Street, Calcutta, and the selling agency of Keshoram Cotton Mills Ltd, in partnership with Hiranand Sewaram styled as Sewaram Bilasrai, 184 Cross Street, Calcutta were allotted to Bilasrai Kejriwal.

4. The family had also selling agency business of the Orient Paper Mills Ltd. This was not divided, and even after the partition it continued jointly between the two separated brothers as equal partners. It may be mentioned that this was the principal source of income to the assesseees.

5. As the separated groups of the erstwhile family maintain their accounts according to the divali year, the investigation period in these cases should run from 11.11.39, the date of the partition, to 24.10.1946. But since some of the allied concerns observe financial year as their accounting year, the investigation period will extend to 31.3.1947.

6. A perusal of the assessment records of the assesseees for the four years immediately preceeding the investigation period shows that their financial position at the commencement of the investigation period was far from satisfactory. Substantial sums out of the borrowed capital has been absorbed by losses and personal expenses, as is reflected by the debit balance in the Capital Account.

7. Shri N. K. Saksena, Officer on Special Duty, who investigated these cases, submitted a lucid report on 6.4.1953. This was followed by three supplementary reports dated 22.6.1953, 25.7.1953 and 7.9.1953. The main report falls into three parts. In the first part, he deals with the selling agency of the Orient Paper Mills Ltd, and he estimates the concealed income from this source at Rs 48,70,000/-. As the selling agency belongs to the entire family, one half of it must be taken to appertain to the branch of Ram Kumar Kejriwal and the other half to that of Bilasrai Kejriwal. The second part of the report deals with Ram Kumar Kejriwal, H.U.F. He estimates the concealed income of this branch at Rs 82,57,750/-. He had proceeded to compute it on investment basis. The estimate under this head should, therefore, include the concealed income made from the selling agency of the Orient Paper Mills Ltd, also. The third part of the report deals with the concealed income of Bilasrai Kejriwal H.U.F. The estimate under this head is Rs 26,87,000/-.

8. These cases of the Kejriwal group were taken up for hearing on the 22nd, 23rd and 29th June, 22nd to 31st July, 5th to 9th October and 30th November and 1st December, 1953. As the hearing progressed, Shri B. P. Khaitan on behalf of the assessee admitted a number of items included in the Officer on Special Duty's report and eventually filed a disclosure statement on 22.6.53 showing concealed profits of about Rs 18 lakhs for both the groups.

9. We propose first to deal with the case of Ram Kumar Kejriwal H.U.F. and his sons who formed a joint Hindu

family with him during the investigation period. In the absence of accounts and vouchers for a good portion of the investigation period, we have to determine the undisclosed income of this branch on the basis of investments. The concealed income found by this process will give us some idea of concealed income derived from the selling agency of the Orient Paper Mills.

10. It may be stated at the outset that we were hampered in our investigation to a great extent by the absence of account books for certain parts of the investigation period. For income from the selling agency of the Orient Paper Mills Ltd, in the name of Messrs Ramkumar Kejriwal & Co., the account books for the period between 28th October, 1943 and 31st March, 1946 were produced. Those for the period from 1st April, 1939 to 27th October, 1943 were not produced. It was alleged that they had been burnt. Shri Ram Kumar Kejriwal produced the account books of his share business from 28.10.1943 onwards. The account books for the preceeding years were not forthcoming. Shri Bilasrai Kejriwal produced the account books from the 8th November, 1942 and the account books for the period prior to 8.11.1942, were not produced on the ground that they had been destroyed. The account books of the paper selling agency related to commission only and the expenses met out of it. No accounts whatever were produced for the sale of paper and board supplied by the Orient Paper Mills Ltd. It appears that these accounts were not produced even in connexion with the income tax assessments. That such accounts were kept, but were deliberately withheld from the

income tax authorities is abundantly clear. The Officer on Special Duty has given cogent reasons for this conclusion at pages 5 to 8 of his main report and we agreed with the same. Shri Ram Pratap Jajodia, Munim of Shri Ramkumar Kejriwal in the Share Department, and Shri Sagarmal Jajodia, who has been in charge of the paper business, stated, when examined by us, that the account books were burnt by them. Their cross-examination shows that this theory of the destruction of the account books is highly improbable. Never before were the account books destroyed like this and there was no valid reason for their destruction. The account books are held in great sanctity by the mercantile community and they are even worshipped. It must be taken, therefore that the account books have been deliberately withheld.

11. *Shri Ram Kumar Kejriwal H.U.F.* We take up first the case of Shri Ramkumar Kejriwal H.U.F. In para 18 of his report dated 6.4.1953 at page 41, the Officer on Special Duty has summed up his conclusion in the following words:

“To sum up, the secret profits work out of Rs 80,23,248/- as follows:

	Rs
1. Unproved sales of Shares & Securities (para 12 of the report)	34,22,248/-
2. Securities pledged with Bank of India Ltd, against loans and overdraft (para 13 of the report)	16,00,000/-
3. Share acquired (para 14 of the report)	12,84,000/-
4. Deposits (para 15 of the report)	5,17,000/-
5. Personal expenses (para 16 of the report)	6,00,000/-
6. Cash in hand (para 17 of the report)	6,00,000/-
Total	<u>80,23,248/-</u>

The concealed profits are, therefore, computed to be Rs 80 lakhs in round figures. In this supplementary report

dated the 22nd June, 1953, the Officer on Special Duty proposed and addition of further sum of Rs 2,57,750/- on account of the shares acquired by the assessee in the names of his relations trusted employees and other *benamidars*.

12. As regards the first item of Rs 34,22,248/-, the particulars as given at page 27 of the main report of the Officer on Special Duty are as follows:

<i>S. No.</i>	<i>Date</i>	<i>Amount</i>	<i>Description</i>
(i)	5.5.44	1,80,937/-	10,000 shares of K. C. Mills Ltd.
(ii)	18.9.44	3,00,000/-	3,000 shares of Regent Estates Ltd.
(iii)	8.8.44	25,000/-	Govt. Paper.
(iv)	12.2.45	6,54,375/-	15,000 shares of Birla Jute Mfg. Co. Ltd.
(v)	30.10.45	65,625/-	6,000 shares of Western Bengal Colfields Ltd.
(vi)	30.5.45	19,975/-	Govt. papers.
(vii)	19.9.45	11,133/-	800 shares of Central India Coalfields Ltd.
(viii)	3.10.45	19,610/-	1,400 -do-
(ix)	17.6.46	5,85,375/-	Government loan.
(x)	8.8.46	10,23,625/-	-do-
(xi)	18.9.45	5,36,593/-	-do-
Total		34,22,248/-	

13. We take up these items now one by one.

(i) 10,000 Shares of *Kesoram Cotton Mills Ltd*—Rs 1,80,937/-.

These shares were shown as sold in the name of one Brij Lal Kejriwal of Jaipur. As the assessee failed to produce any evidence to prove the sale or to furnish their distinctive numbers, the Officer on Special Duty held that they had been purchased by the assessee himself out of his secret profits. It is now stated by the assessee that B. K. Birla was

the seller and the Industrial Trust Ltd, Pilani, was the actual purchaser of the shares in question. A certificate dated 10-6-53 has been filed to this effect by the Trust. These shares have, therefore, been satisfactorily explained.

(ii) 3,000 Shares of *Regent Estates Ltd*—Rs 3 lakhs.

In regard to these shares, it was alleged by the assesseees that the purchaser were the following persons:

Bhagiratmal Shyama Prasad, C/o. R. P. Patodia. 12, Govt. Place, Calcutta.	..	1,000 Shares.
Baluram Ramgopal, C/o. Brij Lal Sanganesia, 38, Wellesley St., Calcutta.	..	500 „
Ram Sarup Satyanarain, C/o. Sheodutt Rai Sedhmal.	..	600 „
Ramgopal Purushottam, C/o. Banshidhar Surajmal, 4, Jagmohan Mullick St., Calcutta...		200 „

The sale-proceeds of the aforesaid shares were realized in cash and in the absence of any evidence to establish the identity of the alleged purchasers, the Officer on Special Duty came to the conclusion that they represented an investment of the assessee's concealed profits. The Regent Estates Ltd, was promoted by Shri G. D. Loyalka (R.C. No. 46) and it is admitted in his case that the aforesaid four persons were his nominees and that the shares were acquired by him out of his concealed profits. This item should, therefore, be also excluded.

(iii) *Government Paper for Rs 25,000/-*.

In regard to this item, it is stated that Shri H. P. Poddar

purchased these Government securities in the name of Dalip Singh Choudhury. Shri H. P. Poddar has filed a certificate to that effect. This certificate exonerates the assessee and there is no good reason to disbelieve it. It is true that the item does not appear in the account books of Shri H. P. Poddar. But for this Shri Poddar and not the assessee is responsible. This item should therefore be excluded. It may be mentioned here that this item is included in the item of Rs 16 lakhs discussed hereafter in para 14 on account of securities pledged by the assessee with the Bank of India Ltd, Calcutta.

(iv) 15,000 Shares of Birla Jute Mfg. Co. Ltd—Rs 6,54,375/-.

These shares too were shown in the account books as sold to Brijlal Kejriwal on account of Chiranjilal Dhurka, Gwalior. In regard to this item, a letter from the United Commercial Bank Ltd, dated 3.9.1953, has been filed to the following effects:

With reference to your letter No. IC (23-4)/51 of August 10, 1953, we give below the relevant portion of the letter received from our Jaipur Branch.

A sum of Rs. 6,54,375/- being the cost of 15,000 shares of the Birla Jute Mfg. Co. Ltd., was remitted to you by us on behalf of M/S. Rajputana Commercial Co. Ltd., Jaipur, on 19th March, 1945.

It is evident from this that the Rajputana Commercial Co. Ltd, Jaipur, was the real purchaser of these shares. This item should therefore be excluded.

(v) 6,000 Shares of West Bengal Coalfields Ltd—Rs 65,625/-.

As regards this item, it is alleged that Laxmi Narain Durga Prasad, 2 Royal Exchange Place, Calcutta, was the

real purchaser. The alleged purchaser is not traceable at this address furnished by the assessee. But the assessee's books show that he received the price of these shares by cheque. The assessee was a share broker. He has many customers and if he cannot trace out a customer he should not be held liable, specially when the price was paid to him by cheque. No one on behalf of this firm has been examined, nor have its account books been produced to prove the purchase. We asked the assessee to produce any evidence to indicate that Laxmi Narain Durga Prasad has had dealings with any other party or share dealer of Calcutta. But not a single name has been pointed out to us. As already stated, the assessee should not be held liable for the purchaser having left the place.

(vi) *Government paper for Rs 19,975/-.*

The assessee contends that the Government paper was purchased in cash by one Murlidhar Tripathi. His address has not been supplied and it is alleged that he was a kerb dealer. The existence of kerb dealers in Calcutta is not denied. Such dealer's address is usually not maintained. The amount is small. We accept the assessee's explanation and exclude this item also.

(vii and viii) *2,200 Shares of Central India Coalfields Ltd—Rs 30,743/-.*

As regards these shares, too, the assessee's contention is that one Jagadish Prasad, who was Kerb dealer, purchased them and that his address is not known. The sale price has been realized in cash. For the reasons given in the last preceeding sub-para, we exclude this item also.

(ix) <i>Government Loan</i>	Rs 5,25,375/-
(x) <i>Government Loan</i>	„ 10,23,625/-
(xi) <i>Government Loan</i>	„ 5,36,593/-

It was alleged before the Officer on Special Duty that Chiranjilal Dhurka, share broker, Morar, Gwalior, was the purchaser of these Government securities. At the hearing before us, evidence was given that on the 17th June, 1946, Rs 5,85,506 was credited to the assessee's account by a bill on a Gwalior Bank and on 9.8.1946 a sum of Rs 10,30,482-13-0 was also credited by another bill on a Gwalior Bank. It was alleged that the last item included Rs 6,857-13-0 on account of interest. On 18th September, 1946, Rs 5,50,000/- were paid to the assessee's account by cheque No. 007654 on the United Commercial Bank. It is said that this last item included Rs 425/- for interest and the balance of Rs 9,121/- was credited to Chiranjilal Dhurka in 'Sundries account', but later it was repaid to him since the cheque for Rs 5,50,000/- was found to be domestic cheque drawn by the Manager, United Commercial Bank Ltd, the matter was pursued further by the Officer on Special Duty. In his letter dated the 9th of October 1953, the Assistant Manager informed the Officer on Special Duty that the payment of Rs 5,50,000/- was made by the Bank on account of Rajasthan Trading Co. Ltd. By their letter, dated 1.12.53, the assessee's gave the following information of the ultimate buyers of the securities purchased by Shri Lal Dhurka from them. As regards the Government loan of Rs 5,85,375/-, they stated that this amount (approximately) was paid out by Messrs Morar Trading Co. Ltd,

Gwalior from their banking account with the United Commercial Bank Ltd, Gwalior, to Shri C. L. Dhurka on or about the 24th June, 1946. In regard to the Government loan of Rs 10,23,625/-, they stated that on or about the 28th August, 1946, Rs 2,65,000 and on the 22nd August, 1946, Rs 5,75,000/- were drawn by Messrs Rajasthan Trading Co., Ltd from their account with the Imperial Bank, Gwalior, and United Commercial Bank Ltd, Jaipur, respectively and paid to Shri Dhurka. The balance of the amount is said to have been paid by Messrs Morar Trading Co., Ltd, from their United Commercial Bank account at Gwalior on or about the 28th August, 1946. For the Government loans of Rs 5,36,593/-, the assesseees stated that this amount was received by them from Shri C. L. Dhurka by a cheque drawn by the United Commercial Bank Ltd, Calcutta, on themselves on account of Rajasthan Trading Co., Ltd. These three items are, therefore, satisfactorily explained and they should be excluded.

This disposes of the first item of Rs 34,22,248/-.

14. Coming to the second item of Rs 16,00,000/- the Officer on Special Duty reports that the G. P. Notes of the face value of Rs 9,75,000/- and the 3% first Development Loan 1970/75 of the face value of Rs 6,25,000/- were pledged by the assesseees with the Bank of India Ltd, Calcutta. The above securities do not find a place in the relevant balance sheet of the assesseees. Hence, it is inferred by him that the aforesaid securities of the face value of Rs 16 lakhs were acquired out of undisclosed profits. It is contended before us that these securities were accounted for in the account

books and that since they were disposed of before the close of the accounting period, they could not be incorporated in the relevant balance sheet. He furnished a detailed statement showing the purchase and sales of the aforesaid securities. In his supplementary report dated 25.7.1953, the Officer on Special Duty, after going through the account has held that the commission from securities to the extent of Rs 15,50,000/- is satisfactorily explained. In regard to the securities of the value of Rs 50,000/-, alleged to have been sold to Shri Hanuman Prasad Poddar (Rs 25,000/-) and Shri Dalip Singh Choudhury (Rs 25,000/-), he reports that they represent an investment from the assessee's undisclosed income. When out of Rs 16,00,000/-, Rs 15,50,000/- have been satisfactorily explained the probabilities are that this sum of Rs 50,000/- also was not from undisclosed profits. In sub-para (iii) of paragraph 13 *supra*, we were shown as sold to Dalip Singh Chaudhury was genuine sale to Shri H. P. Poddar. Another certificate by Shri H. P. Poddar in regard to the securities purchased by him has also been filed. For similar reasons, the sale in his name must also be held to be genuine. This item should, therefore, be excluded from the computation of the undisclosed profit.

15. Coming to the third item of Rs 12,84,000/-, the Officer on Special Duty reports that certain shares were registered in the name of the members of the assessee's family during the investigation period, but they do not find a place in the account books. The particulars of such shares are as follows:

<i>Name of Company</i>	<i>No. of Share</i>	<i>Face Value</i>
1. Hindusthan Investment Corporation Ltd	32,500	3,25,000/-
2. United Commercial Bank Ltd	1,000	50,000/-
3. Model Knitting Industries Ltd	1,800	36,000/-
4. Padmavati Raje Cotton Mills Ltd	2,500	25,000/-
5. General Fibre Dealers Ltd	489	48,900/-
6. Indian Smelting & Refining Co., Ltd	21,000	2,10,000/-
7. Textiles Machinery Corporation Ltd	1,000	1,00,000/-
8. Hindusthan Mercantile Bank Ltd	500	50,000/-
9. Paper Distributors Ltd	800	8,000/-
10. Vijay Laxmi Trading Co., Ltd	800	8,000/-
		<u>8,60,900/-</u>

He also found that the following shares were acquired by the assessee in the name of his wife, Srimati Gogi Devi during the investigation period:

1. Kanpur Electric Supply Co., Ltd	2,000 shares
2. Barrackpur Coal Co., Ltd	1,000 „
3. Equitable Coal Co., Ltd	7,000 „

Out of the aforesaid shares, item No. (1) was duly incorporated in the assessee's books. The remaining items do not find a place in the personal account of the assessee's wife as it stands in the books. Adding Rs 4,23,937/- for the aforesaid shares, the total investment in shares outside the account books has been held by the Officer on Sepecial Duty to be Rs 12,84,837/- or Rs 12,84,000/- in round figures.

16. We take up now the above items one by one:

(1) 32,500 shares of the *Hindusthan Investment Corporation Ltd*, Rs 3,25,000/-.

From the list of shareholders of the company obtained from the Registrar, Joint Stock Companies, Calcutta, it

appears that 32,500 deferred shares of this company were allotted to Messrs Ram Kumar Kejriwal & Co. on 19.3.1940. Since the relevant account books were not produced, the Officer on Special Duty repelled the assessee's contention that these shares had been acquired for his clients and held that they were the shares of the assessee subscribed from secret funds. The assessee has produced two certificates, one from Shri K. K. Birla and the other from Shri L. N. Birla. The former certified that Shri Ram Kumar Kejriwal subscribed on his behalf 8,000 deferred shares of the Hindusthan Investment Corporation Ltd, and these shares were later on in about 1942-43 sold by him to the Birla Education Trust. Shri L. N. Birla certifies that 10,000 shares of the Hindusthan Investment Corporation Ltd were subscribed by Shri Ram Kumar Kejriwal on his behalf and were subsequently sold by him to the Birla Education Trust in about 1942-43. Shrimati Rukmini Birla has shown in her total wealth statement 14,500 shares of this company. Thus the entire 32,500 shares are accounted for and no addition can be made under this head.

(2) 1000 shares of the *United Commercial Bank Ltd*,
Rs 50,000/-.

These shares stand in the name of Shri Nawal Kishore Kejriwal, son of Shri Ram Kumar Kejriwal. It was contended on behalf of the assessee that the shares were subsequently sold to Ram Pratap Harlalka. In proof of this, the assessee has produced a letter dated 14.10.1953 from the United Commercial Bank Ltd, and a letter dated 21.10.53

sent by the assessee to Sri Ram Partap Harlalka has also been filed. It appears from these documents that 1,000 shares with distinctive numbers were allotted to N. K. Kejriwal. Ram Pratap Harlalka bought these shares from N. K. Kejriwal's *benamidar*. After this Ram Pratap Harlalka sold these shares to Messrs Bhartiya Co., Ltd. Eventually these shares came to be held by the persons mentioned in the statement furnished by the United Commercial Bank Ltd, along with their letter dated 14.10.1953. The documentary evidence produced by the assesseees proves their contention and so this item is excluded.

(3) 1,800 shares of *Model Knitting Industries Ltd*, Rs 36,000/-.

(4) 2,500 shares of *Padmavati Raje Cotton Mills Ltd*,
Rs 25,000/-.

These two items are admitted by the assesseees in their disclosure statement dated 22.6.1953 to have been acquired from secret funds and we find accordingly.

(5) 489 shares of *General Fibre Dealers Ltd*, Rs 48,900/-.

A certificate dated 8.10.1953 has been filed from the General Fibre Dealers Ltd, to the effect that 489 shares of that company which were held by Messrs Ramkumar Kejriwal & Co., were transferred to Messrs Satya Company Ltd, on the 7th August, 1944. There is further a certificate dated 27.6.1952 from this company to show that payment was made by cheque. An enquiry was made from the Registrar Joint Stock Companies, Calcutta, and it was found that in 1945 Satya Company Ltd, is shown as the holder of

these shares. This confirms the certificate dated 8.10.1953 given by the General Fibre Dealers Ltd. The evidence before us, therefore, does not establish that these shares were acquired out of secret funds of the assessees.

- (6) 21,000 shares of the *Indian Smelting & Refining Co., Ltd.*, Rs 2,10,000/-.

The books of this company were examined. From the Share Register, it was found that 40,000 shares were registered in the name of Shri Ram Kumar Kejriwal on 10.12.1948. These shares were purchased by him from the Gwalior Webbing Co., Ltd, Morar, Gwalior, to which these shares were allotted on the 10 July 1947. The cash book of the company showed that it received Rs 2,50,000/- in cash for 25,000 shares on 9.4.1947 and Rs 1,50,000/- on 27.5.1947 for the balance. Shri Ramkumar Kejriwal sold these shares in 1948, 1949 and 1952. It is clear that Shri Ramkumar Kejriwal acquired these shares in the post-investigation period and therefore they are not taken into consideration in our computation of the concealed income.

- (7) 1,000 shares of the *Textile Machinery Corporation Ltd.*, Rs 1,00,000/-.

The Officer on Special Duty states in his report that from the list of shareholders obtained from the office of the Registrar, Joint Stock Companies, Calcutta, it appears that 1,000 preference shares of this company were allotted to Messrs Ramkumar Kejriwal & Co., on 22.1.1941. The assessee's contention is that these shares were never

subscribed by him but were subscribed really by Jagannath Sriratan Bikanerwalla (750 shares) and Mrs Sunderbai Bhaya Bikanerwalla (2,500 shares). A certificate to this effect dated 13.7.1953 has been filed from the Textile Machinery Corporation Ltd. They say that the shares were allotted to Messrs Ramkumar Kejriwal & Co., but subsequently the scripts were issued to the aforesaid two persons in accordance with the assessee's letter dated 31.1.41. Further letters from the Textiles Machinery Corporation Ltd have been filed to prove that dividends on these shares have also been paid to the aforesaid two persons by cheque. The assessee's case that they did not invest any money in the shares of this company is thus amply established.

In his supplementary report, dated 7.9.1953, the Officer on Special Duty has discussed these shares after examination of the account books of the Textiles Machinery Corporation Ltd. He expressed the opinion that the value of these shares appears to have been realized from the assessee. He has shown that out of Rs 1 lakh two items (Rs 20,000/- and Rs 20,000/-) were paid in cheque and the rest in cash and these cheques were drawn by Messrs Ramkumar Kejriwal & Co. Messrs Ramkumar Kejriwal & Co. were share brokers also and if these two cheques were drawn by them, it does not necessarily follow that the shares were subscribed by them for themselves. Share brokers issue cheques for their clients also. At any rate, when we have the fact that the share certificates were issued to Jagannath Sriratan Bikanerwalla and Mrs Sunderbai Bhaya Bikanerwalla and dividends have been realized by them, the weight

of evidence is in favour of the conclusion reached above.

- (8) 500 shares of the *Hindusthan Mercantile Bank Ltd*,
Rs 50,000/-.

This Bank was promoted by the Jaipurias, the assessee's contention is that he never subscribed these shares. The Jaipurias approached them for subscribing these shares and themselves paid the money, but later on when Ram Kumar Kejriwal declined to subscribe for those shares, the Jaipurias reversed the entries in their account books. The books of account of the Jaipuria were summoned and examined. They corroborated the contention of the assessee. No addition should, therefore, be made to the concealed income of the assessee under this head.

- (9) 800 shares of the *Paper Distributors Ltd*, Rs 8,000/-.

- (10) 800 shares of *Vijay Laxmi Paper Trading Co., Ltd*,
Rs 8,000/-.

The assessee admits these two items. It was also agreed that there was an arithmetical mistake in that instead of 800 shares in each of these companies it should be 1,250 shares and the face value should be Rs 12,500/- for each company instead of Rs 8,000/-. It was also agreed on behalf of the assessee that these investments should go to the account of Ram Kumar Kejriwal H.U.F.

- (11) 1,000 shares of *Kanpur Electric Supply Co., Ltd*,
Rs 28,375/-.

(12) *House property 12/1 Alipore purchased in the name of Shrimati Gogi Devi on 21.7.1941 for Rs 1 lakh.*

It is admitted on behalf of the assessee that there is an arithmetical mistake in the first of these items. Shrimati Gogi Devi, wife of Shri Ramkumar Kejriwal really holds 2,000 shares in this company, the value of which is Rs 56,750/-. The assessee's contention is that she acquired these shares as well as the house property at No. 21/1 Alipore from her own funds. The house property was purchased for Rs 1 lakh. The consideration money was disbursed as follows:

Rs 5,000 Earnest money in cheque.

Rs 25,000 Cash.

Rs 70,000 borrowed from Ruby General Insurance Co. Since the sum of Rs 5,000/- was paid by cheque, it may be presumed that the payment of earnest money was made out of disclosed funds. The sum of Rs 70,000/- borrowed from the Ruby General Insurance Co., was repaid in cash as under:

Rs 42,000/- on 13.4.1943.

Rs 28,000/- on 30.5.1944.

The first item of Rs 42,000/- came out of a deposit with the Regent Estates Ltd. It was initially made out of the sale proceeds of ornaments alleged to have been sold on the following dates:

13.4.1940

22.7.1941

Rs 41,607/-

„ 45,706/-

Rs 87,313/-

For the sum of Rs 28,000/- it is also alleged that it came out of the sale proceeds of ornaments.

These sales of ornaments are alleged to have been made to Shivpujan Rai Indrasan Rai. He was, however, not examined and there is no satisfactory evidence before us about the sale of the ornaments. The total investment in house property out of the secret profits thus works out to Rs 95,000/- taking into account. Rs 56,750/- for the purchase price of 2,000 shares of the Kanpur Electric Supply Corporation Ltd, the investment in the name of the assessee's wife during the investigation period works out to Rs 1,51,750/-. It, however, appears from the income tax records that Shrimati Gogi Devi had a sum of about Rs 12,000/- to her credit at the commencement of the investigation period. Further allowing about Rs 9,000/- for the income from rent, interest and dividends assessed in her hands, the investment of secret profits in house property and shares of Kanpur Electric Supply Co., Ltd, roughly works out to about Rs 1,30,000/-. This amount must be taken to have come from the concealed income of the assessee.

(13) 6,000 shares of *Burrakar Coal Co., Ltd.*

(14) 7,000 shares of *the Equitable Coal Co., Ltd.*

No addition can be made under these two heads as the shares in these two companies were acquired after the investigation period.

17. On page 40 of his report, the Officer on Special Duty has made a reference to 5,500 shares of the Jaipur

Development Co., Ltd, which according to him, were acquired out of secret profits. It appears that 5,500 shares were acquired by the Kejriwals in 1943 in the following names:

<i>Name</i>	<i>No. of shares</i>	<i>Face value</i>
1. Ram Pratap Jajodia	3,000	Rs 30,000
2. Sanwalram Jajodia	1,500	„ 25,000
3. Sagarmull Jajodia	100	„ 1,000
	Total „	<u>56,000</u>

The assessee admits items No. 2 and 3 investments from their secret funds, but deny item No. 1. Ram Pratap Jajodia is one of the principal employees of the assessee and the acquisition of shares in his names was clearly fictitious. It is difficult to believe that this employee permanently living and working in Calcutta would have thought of investing his money in a company floated in Jaipur. There is no proof that Ram Pratap Jajodia paid the consideration of these shares to Shri Ram Kumar Kejriwal. There is no evidence to show that Ram Pratap Jajodia ever realized any dividend on these shares. It is said that the company has paid no dividend. We have no doubt in our mind that 2,000 shares standing in the name of Ram Pratap Jajodia were also acquired by the assessee from their secret funds. It is further claimed that a deduction of 50% out of the investment in the aforesaid shares should be allowed as appertaining to the share of the assessee's brother, Shri Bilasrai Kejriwal. Since we have later on held that the shares of Jaipur Development Co., Ltd, were subscribed by both the branches of the Kejriwal group in equal shares, we accept his claim

and allow a deduction of Rs 28,000/- for the share of Bilasrai Kejriwal. The balance of Rs 28,000/- will be considered in the assessee's hands.

18. Now, we take up the shares specified in the supplementary report dated 22nd June, 1953, of the Officer on Special Duty.

(1) 100 shares in *Fute & Stores Ltd*, Rs 10,000/-.

These shares are included in the 1,700 shares shown by the assessee in Appendix 'A' to the disclosure statement. It is contended, however, that this block of shares belongs half and half to both the branches, viz., Ram Kumar Kejriwal and Bilasrai Kejriwal. From the list of shareholders, it appears that at least about 500 shares stand in the names of persons who are directly connected with Shri Bilasrai Kejriwal. Although the two brothers separated in 1939, relations between them continue to be good and in *benami* transactions they appear to have acted in concert. Hence in the computation of the undisclosed income of Ram Kumar Kejriwal H.U.F. only half of Rs 1,80,000/-, viz., Rs 25,000/- should be taken.

(2) 100 shares in the *Himalayan Products Ltd*, Patiala, Rs 1,000/-.

These shares stand in the name of the assessee's son Nawal Kishore Kejriwal, but it is contended that they are the property of Messrs Orient Paper Mills Ltd, a certificate to that effect has also been filed. They are, therefore, excluded from our computations. In the disclosure statement, however,

6,000 shares in this company are admitted to be held but according to the statement filed on 10.10.1953 they appertain to Bilasrai Kejriwal and so they cannot be taken into computation while considering the concealed income of Ram Kumar Kejriwal.

(3) 25 shares in the *Merchandise & Stores Ltd*, Rs 250/-.

This admitted by the assessee and so should be taken into the computation of his concealed income.

(4) 1,900 shares in the *Usha Investment Corporation Ltd*, Rs 19,000/-.

These shares stand in the name of Srinivas Kejriwal, Fatehpur, Jaipur. The assessee denies that anyone of the name of Shrinivas belongs to his family, or that he is in any way related to him. The mere fact that the word 'Kejriwal' is added to the name of Shrinivas cannot be taken as sufficient proof of the fact that he was, in anyway, connected with the assessee. For want of sufficient evidence, we must exclude this item.

(5) 5,000 shares in the *Jaipur Development Co., Ltd*, Rs 15,000/-.

These shares stand in the name of Brijlal Chooriwala of Churwawa. In the disclosure statement 45,000 shares of the value of Rs 4,55,000/- in this company are admitted. One-half of this viz., Rs 2,27,500/- appertain to the share of Ram Kumar Kejriwal and are taken accordingly. The remaining 22,750 shares are the property of Shri Bilasrai Kejriwal.

- (6) 700 shares in the *Usha Investment Corporation Ltd.*,
Rs 7,000/-.

These stand in the name of Nand Kishore Agarwal, Jaipur. Nand Kishore was one of the sons of Shri Ram Kumar Kejriwal and he was alive at the time when these shares were purchased, viz., on 1.5.1946. The real home of Nand Kishore was in Jaipur State. The fact that instead of adding 'Kejriwal' he used the word 'Agarwal' cannot be allowed to hide the reality. We have often found the word 'Agarwal' interchangeable with other surnames. This item must be held as in investment from secret funds. But for reasons given in sub-para (1) of this paragraph, only one-half of this amount, viz., Rs 3,500/- should be computed against Shri Ram Kumar Kejriwal H.U.F.

- (7) 2,700 shares of the *Bamboo Suppliers Ltd.*, Rs 27,000/-.

The shares stand in the name of Nand Lal Chooriwala, who is an admitted *benamidar* of the assessee in respect of the shares of Paper Distributors Ltd, and Vijay Laxmi Paper Trading Co., Ltd. A certificate from the Bamboo Suppliers Ltd, has however, been filed to the effect that the sum of Rs 27,000/- was received in cash on 25.3.1946 from Rajasthan Trading Co., Ltd, for the shares supplied for in the name of Nand Lal Chooriwala. We therefore exclude this item from our computation in the present case.

- (8) 150 shares of the *Vijay Laxmi Trading Co., Ltd.*, 500 shares of the *Paper Distributors Ltd.*, Rs 5,000/-.

These two items are admitted by the assessee. They have

however, already been taken into account in the computation of the concealed income under items No. (9) and (10) of para 16 *supra*.

- (10) 50 shares in the *Upper Ganges Sugar Mills Co., Ltd*,
Rs 5,000/-.

According to the O.S.D., these shares are registered in the name of Nand Lal Chooriwala, who is admittedly a *benamidar* of the assessee. It, however, appears that the name of the registered shareholder is Nand Lal Ghuwalewala and not Chooriwala. Further, a certificate from the Upper Ganges Sugar Mills Ltd, has also been filed to the effect that no preference shares of Upper Ganges Sugar Mills Ltd, were at any time registered in the name of Nandlal Chooriwala. We, therefore, exclude the item of Rs 5,000/-.

- (11) 5,000 shares in *Vijay Paper Corporation Ltd*, Rs 50,000/-
standing in the name of *Madan Lal Jajodia*.

- (12) 400 shares in *Vijay Paper Corporation Ltd*, Rs 4000/-
standing in the name of *Nagarmal Sagarmal*.

- (13) 2,900 shares in the *Bamboo Suppliers Ltd*, Rs 29,000/-
standing in the name of *Nagarmal Sagarmal*.

- (14) 2,500 shares in *Usha Investment Corporations Ltd*,
Rs 25,000/- standing in the name of *Sanwalram Jhun-*
jhunwala.

- (15) 400 shares in *Usha Investment Corporation Ltd*,
Rs 4,000/- standing in the name of *Brij Mohan Pujari*.

There is no proof of any connexion between the assessee

and the persons mentioned above in whose names these shares stand. They will, therefore, not be taken into the computation of the concealed income of the assessee.

(16) 100 shares in the *Jaipur Development Co., Ltd*, Rs 1,000/-.

They stand in the name of Buland Singh and are included in 45,500 shares disclosed by the assessee.

19. 37,800 shares of the *Rajasthan Trading Co., Ltd*, Rs 3,78,000/-.

In Appendix 'A' of the disclosure statement, it is admitted that in 1943, 12,600 shares and from 1944 to 1946, 63,800 shares of this company were purchased by Bilasrai and Ram Kumar Kejriwals H.U.Fs. One-half of the total of these shares comes to 37,800 shares. On their own admission, therefore, Rs 3,78,000/- must be added in the computation of the secret income of Ram Kumar Kejriwal H.U.F.

20. The fourth item in the report of the O.S.D., is of Rs 5,17,000/- being the deposits which are discussed in para 15 at pages 35-36 of his report. Their particulars, as given at pages 36 of the report, are follows:

1. Bank Deposits	Rs 4,00,000
2. Regent Estates Ltd	,, 35,000
3. General Produce Co., Ltd	,, 23,000
4. M/s G. D. Loyalka & Co.	,, 59,000

(1) Out of the deposits of Rs 4 lakhs in banks, Rs 3,00,000/- were in the United Commercial Bank Ltd, Gwalior branch. They are admitted by the assessee. This amount should, therefore, be included in the computation of the secret

profits of Ram Kumar Kejriwal, H.U.F, but for reasons given in sub-paragraph (1) of paragraph 18 *supra* only to extent of one half.

The Officer on Special Duty has also mentioned an item of Rs 1,00,000/-, being a deposit made on the 30th July, 1945, in the Jodhpur Commercial Bank Ltd, in the name of Krishna Devi Kejriwal. It is contended by the assessee that this deposit does not belong to the assessee although Krishna Devi Kejriwal is the name of the wife of his son, Nawal Kishore Kejriwal. The only address of this lady as furnished by the bank is that she was the resident of Sakhu. From the evidence on record, it is not possible to trace this item of Rs 1 lakh to Shri Ram Kumar Kejriwal, daughter-in-law of Ram Kumar Kejriwal had no connexion with Sakhu. This item therefore should be excluded from the computation of secret income of the assessee.

(2) and (3). The deposit of Rs 35,000/- in the Regent Estates Ltd, and of Rs 23,000/- in the General Produce Co., Ltd, were made respectively on 13.4.1940 and 22.7.1941 in the name of Shrimati Gogi Devi, wife of Shri Ram Kumar Kejriwal, it is alleged that the former was made out of proceeds of ornaments sold through M/s Shivpujan Rai Indrasan Rai. No evidence of the alleged sale of these ornaments was adduced. It has, however, been already considered above when dealing with the purchase of house property, No. 12/1 Alipore, and of the shares of the Kanpur Electric Supply Co. As it has been already included once in the undisclosed income of the assessee it cannot be included again. As to the second item, the deposit of Rs 23,000/- was made

out of the sale proceeds of shares of Ruby General Insurance Co. Ltd, which were acquired before the commencement of the investigation period. These two items should, therefore, be excluded here.

(4) As regards the deposit of Rs 59,000/- made with M/s G. D. Loyalka & Co., the latter have filed a certificate to the effect that the deposit was repaid by them on 28.10.43 through Ratanlal Mulchand. From the books of account of M/s G. D. Loyalka & Co., it appears that on 28.10.43, the deposit of Rs 59,000/- was transferred to the credit of Ratanlal Mulchand. It is stated before us on behalf of the assessee that Ratanlal Mulchand was fictitious person and actually the amount was repaid by Shri G. D. Loyalka to the assessee on 28.10.1943. Be that what it may, from the evidence adduced in the case of Messrs G. D. Loyalka & Co., it appears that the money transferred to the credit of Ratanlal Mulchand was repaid by cheque early in 1945. It is thus clear that this deposit of Rs 59,000/- did not subside at the end of the investigation period and cannot be therefore taken into account in determining the secret income of the assessee.

In Appendix 'A' of the disclosure statement, however, a deposit of Rs 45,000/- in the Regent Estates Ltd, has been mentioned. This amount should therefore be included in the computation of the undisclosed profits.

21. The fifth item is that of personal expenses and the O.S.D. estimates it at Rs 6 lakhs in para 16 of his report. On an examination of the account books, he has shown that during 1943 to 1946 the total drawings for personal expenses were Rs 35,323/- only. As the account books for the period

prior to 28.10.1943 were not produced, the withdrawals made for personal expenses during that period could not be ascertained. He has also pointed out that even during 1943 to 1946 for months together there was no withdrawal for personal expenses. From this he infers that the personal expenses were met partly of the secret funds. He has referred to the assessee's trips to Mussoorie and to the fact that Shri Ram Kumar Kejriwal is a member of Royal Turf Club and maintained race horses during the investigation period. Taking everything into consideration, we are of the opinion that for personal expense during the investigation period a sum of Rs 1,25,000/- may be regarded as having been met out of secret income. We have taken the expenditure approximately at rupees two thousand per month.

22. During the investigation period, Shri Ram Kumar Kejriwal performed the marriages of his two sons, Shri Nawal Kishore Kejriwal and Shri Har Kishore Kejriwal, and of his daughter, Bai Sushila. It is admitted that the marriage expenses are not accounted for in the books. The assessee contends that he has reformist ideas and is opposed to pomp and show and unnecessary expenses in marriages. He alleges that he neither accepted any substantial dowry at the time of his sons' marriages, nor did he give any large sum as dowry in the marriage of his daughter. The assessee admitted that at least Rs 45,000/- was spent in these three marriages. Taking everything into consideration, we are of the opinion that a sum of Rs 75,000/- may be estimated as the expenses of these three marriages met out of the secret profits.

23. Under the heading 'Personal Expenses', the O.S.D. has also taken into consideration, house property No. 12/1 Alipore, gold bullion, jewellerys and guineas. He pointed out that in his total wealth statement as on 24.10.1946, Shri Ram Kumar Kejriwal has shown that he was in possession of about 1,200 tolas of gold including gold coins and substantial amount of jewellery which was in the possession of his family since a long time. Similarly, the total wealth statement of his sons discloses the following position:

<i>Name</i>	<i>Description</i>
1. Shri Nawal Kishore Kejriwal	200 guineas, diamond rings, studs and gold ornaments.
2. Shri Har Kishore Kejriwal	550 guineas and some jewellery.
3. Chandra Kishore Kejriwal	225 guineas.

He has also pointed out that the total wealth statements of other members of the family were not furnished. He has sought to draw the inference that they too must be holding guineas and jewellerys at the close of the investigation period. In view of the financial position as disclosed by the figures at the assessment prior to the investigation period, he thinks it unlikely that the assessee could possess any substantial amount of jewellery or bullion at the commencement of the investigation period. From this he concludes that the bullion and jewellery shown in the total wealth statement 'must have been acquired to a *large extent* during the period under consideration.' From the account of Messrs Thakurdas Hira Lal, Jewellers, he has shown that the assessee got some jewellerys made during the investigation period.

So far as the acquisition of the house property is concerned, we have already considered it above and have taken into computation the price paid for it.

While it is true that the assessment proceedings of the assessee prior to the investigation period do not disclose any condition of prosperity, it cannot be said that they had absolutely no jewelleries, guineas or gold coins. The family has been a member of Calcutta Stock Exchange Association since 1928 and have been also doing business in Hessian. They got the selling agency of K. C. Mills in 1929. The ladies of this family would have possessed some ornaments of value. In fact, the O.S.D. in his report does not state that the entire gold and jewelleries shown in the total wealth statements were acquired during the investigation period. He has expressed the view that 'to a large extent' they were acquired during the period. At the same time, it cannot be said that the figures given in the total wealth statement were precisely correct. They may have been underestimated. We estimate that at least 750 tolas of gold and gold coins (valued at Rs 60,000/- at the average rate of Rs 80/- per tola), jewelleries of Rs 25,000/- and at least 975 guineas (valued at Rs 58,500/- at the average rate of Rs 60/- per guinea) were acquired by the assessee during the investigation period.

24. *Cash in hand.* The last item, viz., cash in hand, has been estimated by the O.S.D. at Rs 6 lakhs. He has shown that in April 1947, a sum of Rs 2,50,000/- was remitted by draft in the name of Shrimati Shashi Kala to Gwalior. In Gwalior, the sum of Rs 2,50,000/- was placed in deposit with

the United Commercial Bank Ltd, and was later on utilized to acquire 4,100 shares of Indian Iron and 3,600 shares of Steel Corporation, by retiring Hundis drawn on Shri Durga Prasad Mandelia of Gwalior. In computing the cash-in-hand at the closing date of the investigation period, the O.S.D. takes the remittance of Rs 2,50,000/- into account as it does not find a place in the account books. It is contended, however, on behalf of the assessee, that this remittance was made out of Rs 3,00,000/- returned by the United Commercial Bank Ltd, Gwalior branch, which we have already included in secret profits. A certificate dated 10.10.1953 by the United Commercial Bank Ltd, has been filed. It is to the effect that the fixed deposit of Rs 3 lakhs favouring Shri Nawal Kishore Kejriwal was paid by the Gwalior branch in cash on the 18 September 1946. There was thus a time lag of about seven months between the return of this deposit and the remittance made in April 1957, and it is contended on behalf of the Department that this sum of Rs 2,50,000/- should not be taken as having come out of the deposit of Rs 3 lakhs returned in September 1946. It is argued that businessman would not keep his money idle. Against this contention, however, there is the circumstance that it does not appear as to where the sum of Rs 3 lakhs returned by the United Commercial Bank Ltd, in September, 1946 was invested, or what becomes of it. The investments made by Shri Ram Kumar Kejriwal have been traced out by the O.S.D. with great industry, but it is not possible to connect any of them with the deposit returned in September, 1946, by the United Commercial

Bank. This factor lends supports to the assessee's contention that Rs 2,50,000/- invested in the United Commercial Bank in April, 1947, came out of Rs 3 lakhs returned by it in September, 1946. The item of Rs 2,50,000/- should, therefore, be excluded from the computation of the undisclosed profits. No hard and fast rule can be laid down as to what should be the time lag between two investments in order to disprove any connexion between them. Such time lag varies with the circumstances of each case. As this was a concealed profit, there would not be that readiness to bring it out as in the case of disclosed profit. At the same time, it is argued by the O.S.D. that apart from the remittance of Rs 2,50,000/- to Gwalior in the name of Bai Shashi Kala, there are substantial cash withdrawal out of Bank accounts kept for the concealed business of sale of paper in the closing months of the investigation period, and that 50% of such withdrawals must have gone to the cash reserve of the assessee. Such withdrawals have been enumerated by the O.S.D. on pages 11 and 16 of his report, and we find that they are substantial. It is contended on behalf of the assesseees that these withdrawals from the banks were re-invested in shares and securities. We have examined this matter in detail. The unexplained withdrawals made from the United Commercial Bank Ltd, by Messrs Ram Kumar Kejriwal & Co., in 1946 were Rs 2,23,000/- and those by the United India Paper Trading Co. (another name of the assessee) in the same period were Rs 7,71,000/-. The investments made by Shri Ram Kumar Kejriwal are not to the extent of the aggregate of

these two amounts. A sum of about Rs 3 lakhs remains un-explained. We are of opinion that one half of this amount, viz., Rs 1,50,000/- out of these Bank withdrawals should be held to have remained with Shri Ram Kumar Kejriwal H.U.F., as cash-in-hand at the end of the investigation period.

25. Then there is an item of Rs 70,000/- appearing in the assessee's account on 8.10.1947 in the name of Durga Prasad Mandelia of Gwalior. The O.S.D. has expressed the opinion that this was a deposit really made by Shri Ram Kumar Kejriwal. Despite a specific notice on this point, no evidence was adduced by the assessee to prove that the real owner of this deposit was Shri Durga Prasad Mandelia. This gentleman is the General Manager of Jiyajee Rao Cotton Mills Ltd, Gwalior, managed by the Birlas, with whom the assesseees are closely connected. It is contended, however, on behalf of the assessee that Rs 40,000/- of this sum came out of the deposit of Rs 3,00,000/- returned by the United Commercial Bank Ltd, in September, 1946. We have already held above that Rs 2,50,000/- of this returned deposit was re-invested. For the same reasons we hold that Rs 50,000/- of this deposit in the name of Shri D. P. Mandelia came out of the returned deposit of Rs 3 lakhs. The balance of Rs 20,000/- must be held to have come out of the undisclosed income.

26. Further, it appears that high denomination notes were encashed in the following names:

1. Messrs Ram Kumar Kejriwal & Co.
2. Messrs United India Paper Trading Co.

Rs
11,000
60,000
<hr/> 71,000

The O.S.D. has expressed the view that usually un-invested secret profits were kept in high denomination notes and the entire sum of Rs 71,000/- should be taken as undisclosed income. It is contended on behalf of the assessee that the sum of Rs 71,000/- is covered by the cash-in-hand and should not be taken into the computation of the undisclosed profits. It is admitted by the assessee that the United India Paper Trading Co. also belonged to the Kejriwals. We are of opinion that high denomination notes of Rs 11,000/- cashed by Messrs Ram Kumar Kejriwal & Co., may be taken as part of the disclosed cash-in-hand. But Rs 60,000/- was from undisclosed income. Half of this, viz., Rs 30,000/- is attributable to Ram Kumar Kejriwal and this amount must be included in the concealed income of Ram Kumar Kejriwal.

27. Lastly, the assessee must have got some cash-in-hand at the close of the investigation period. In the total wealth statement filed by the assessee, the existence of some cash-in-hand is admitted, but the amounts are not mentioned therein, and it is stated that they were small. Considering the position and the volume of business done by the assessee, we estimated the cash-in-hand at the close of the investigation period at Rs 50,000/-. The total of cash-in-hand thus works out to Rs 2,50,000/- as follows:

	Rs
Out of Bank withdrawals	1,50,000
Out of D. P. Mandelia's deposit	20,000
High denomination Notes	30,000
Cash-in-hand estimated as above	50,000
	<u>2,50,000</u>

28. It appears that a new business in the name and style of Nawal Kishore Kejriwal was set up at 8 Royal Exchange Place, Calcutta, on the 7 July 1940, for the supply of Jute to local merchants. A partnership deed was executed on the 16 July 1940, and the following persons were shown therein as partners:

Shri Nawal Kishore Kejriwal 0-12-0

„ Gulzri Lal Patodia 0- 4-0

On the basis of the aforesaid partnership, Shri Nawal Kishore Kejriwal has been assessed to income tax in the status of an individual from 1942-43 to 1947-48 on a total income of Rs 32,375/-. The O.S.D. has expressed the view that as Shri Nawal Kishore Kejriwal was member of the H.U.F. headed by Shri Ram Kumar Kejriwal, this business must be taken to be that of the H.U.F. and should have been assessed as such. It is contended on behalf of the assesseees that a member of a joint Hindu family can have a separate business of his own and there is no bar in law to hold income from such business as this self acquired property. It appears that the capital for this business was borrowed by Nawal Kishore Kejriwal from the H.U.F. trading in the name and style of Messrs Ram Kumar Kejriwal & Co., and a sum of Rs 2,026/- was paid to it on account of interest in the first year of its income. When interest was paid by Nawal Kishore Kejriwal to the H.U.F. on the loan taken by him there is hardly any room for doubt that this business was not that of the H.U.F. but his own. We are of the opinion that no further addition should be made on this account.

29. To sum up, the secret profits of Shri Ram Kumar Kejriwal H.U.F. work out as follows:

	Rs
1. 1,800 Shares of Model Knitting Industries Ltd	36,000
2. 2,500 Shares of Padmavati Raje Cotton	25,000
3. 1,250 Shares of Paper Distributors Ltd	12,500
4. 1,250 Shares of Vijay Laxmi Trading Co., Ltd	12,500
5. 2,800 Shares of Jaipur Development Co., Ltd	28,000
6. 850 Shares of Jute & Stores Ltd	85,000
7. 25 Shares of Merchandise and Stores Ltd	250
8. 37,800 Shares of Rajasthan Trading Co., Ltd	3,78,000
9. 350 Shares of Usha Investment	3,500
10. 2,500 Shares of Jaipur Development Co., Ltd	2,27,500
11. Deposit with Regent Estates Ltd	45,000
12. Deposit with the United Commercial Bank Ltd	1,50,000
13. House property and shares of the Kanpur Electric Supply Corpn.	1,30,000
14. Personal expenses	1,25,000
15. Marriages	75,000
16. Gold bullion	85,000
17. Jewellery	25,000
18. Guineas	58,500
19. Cash-in-hand	2,50,000
Total	17,51,750

30. *The Selling Agency of the Orient Paper Mills Ltd.* The non-production of the account books of this business by the assesseees has already been referred to in para 9 *supra*. During the period of investigation, there were three deeds of agreement between the Orient Paper Mills Ltd, and the assesseees as regards the selling agency viz., in 1939, 1941 and 1944. A copy of the last deed of agreement only has been produced. The first two deeds of agreement were not produced, nor were they made available by the Orient Paper Mills Ltd.

We were, therefore, not in a position to know precisely the terms of the selling agency according to the deeds of agreement of 1939 and 1941. We have already mentioned that no account books for any period in regard to the sale of paper by the assessee were produced. The O.S.D. rightly remarks that in the absence of the account books it is not possible to compute the actual profits to any degree of accuracy. He, however, obtained copies of the assessee's bank accounts from the United Commercial Bank Ltd, for the period from 1.4.1943 to 31.12.1946 with a view to utilizing them to form some idea of the profits made. He has expressed the view that having regard to the nature of the business, the credits in the bank accounts should ordinarily consist of cash and cheques received from the customers in part or full payment of the sale price of paper supplied to them, while the debits should in the ordinary course, represent payment made to the Orient Paper Mills Ltd, for purchase of paper and other withdrawals for business expenses. He concludes that the excess for receipts from customers over payment made to the Orient Paper Mills Ltd, and withdrawals for expenses should roughly represent the profits of the business. Proceeding on this basis, he compared in details the bank accounts with a copy of the assessee's account as it stood in the books of the Orient Paper Mills Ltd. He sorted out withdrawals of Rs 20,000/- and above leaving out items of lesser amounts as withdrawals for expenses. He found that between 30.6.1943 and 8.10.1946, the assessee's withdrawals from the United Commercial Bank Ltd, 2 Royal Exchange

Place, Calcutta, a total sum of Rs 28,86,500/- consisting only of withdrawals of Rs 20,000/- and above. Allowing Rs 3,86,500/- for *bonafide* payments in connexion with business which may have escaped his notice, he estimated the profits to be Rs 20 lakhs for the period commencing from 1.4.1943. For the period from 1.4.1939, he estimated the profits roughly at Rs 10 lakhs and in making this estimate, he kept in view the fact that there was little scope of abnormally high profits during the pre-control period. Thus, he estimated the total concealed profits from the paper business of Messrs Ram Kumar Kejriwal & Co., at Rs 30 lakhs.

31. In the course of hearing before the Commission, the assessee produced 8 bank pass-books. As these were not available to the Officer on Special Duty when he submitted his report, he was asked to scrutinize them and to submit a further report in the light of the same. These pass books showed the accounts from November, 1942. In his supplementary report dated 25.7.1953, the Officer on Special Duty has submitted the result of his scrutiny and has arrived at the conclusion that his original estimate of Rs 30 lakhs did not require any adjustment.

32. In October, 1945, the business styled as the United India Paper Trading Company, 104 Old China Bazar Street, Calcutta was started and it continued up to the 30th April, 1946. The profits of his concern did not appear to have been subjected to income tax. The O.S.D. has arrived at the conclusion that the business styled as Messrs United India Paper Trading Co., was really the assessee's

business run under another name. He has given cogent reasons for the same. In fact, his finding was not disputed before us by the assessee. The profits made by the United India Paper Trading Co. should also be brought to assessment. The O.S.D. estimates them at Rs 8 lakhs.

33. In April, 1946, a business styled as Messrs Bengal Laxmi Paper Trading Co., was started. In regard to this company also, the O.S.D. has arrived at the conclusion that it also belonged to the assessee for carrying on the business in paper and it was merely a trade name '*introduced to serve as a smoke screen to conceal the real state of affairs*'. The O.S.D. estimates Rs 4 lakhs as the concealed profits of the Bengal Laxmi Paper Trading Co.

34. Thus, the total concealed profits from the selling agency of the Orient Paper Mills Ltd, estimated by the O.S.D. are Rs 42 lakhs. To this he adds Rs 6,70,593/- for fictitious losses in speculation claimed successfully by Messrs Ram Kumar Kejriwal & Co., Bengal Paper Trading Co., Vijay Laxmi Paper Trading Co., Ltd, and Paper Distributors Ltd. Thus he arrives at the total figures of Rs 48,70,593/-.

35. It is contended on behalf of the assessee that the estimate is exaggerated. It is argued that the estimate involves the assumption that the withdrawals of money from the banks were never put back in business or invested or, that there was no rotation. The Orient Paper Mills Ltd, went into production in February, 1939. It manufactured only kraft paper and board. It is alleged that in the beginning the quality was poor but gradually it improved. It is

pointed out that during a certain part of the investigation period, about 80% of production went to the Government and to the permit holders and it was only the balance of about 20% which was at the disposal of the assessee to sell in the open market. It is also alleged that the assessees were allowed by the Mills a discount of 5% plus $1\frac{1}{2}\%$ for prompt payment, equal to $9\frac{1}{2}\%$. Besides this a commission of $3\frac{1}{2}\%$ was allowed in the beginning which was later raised in 1941 to 5%. In 1944, the Paper Control Order came into force and it provided that the paper manufacturing mills should allow a minimum discount of 10%. In August, 1946, the 10% discount was reduced to $7\frac{1}{2}\%$. Besides the 10% discount, a further 15% which was later on reduced to $12\frac{1}{2}\%$ was allowed to retailers. Further it was argued that during the first three years' period of the production by the Orient Paper Mills Ltd it was not a sellers' market and when the Paper Control order was enforced the opportunities of making on money were very little as the bulk of the supplies had to be made to the Government and to the permit holders. Shri B. P. Khaitan on behalf of the assessees suggested that secret profits of the assessees from the paper business should be calculated at 5% of the value of paper supplied by Orient Paper Mills Ltd, to the assessees. From the statement submitted by the Orient Paper Mills Ltd, in its own case, it appears that between the years 1939-40 and 1945-46 paper of the value of Rs 1,96,64,936/- was supplied by it to Messrs Ram Kumar Kejriwal & Co. Figures for 1946-47 have not been so far furnished by the Mills.

36. No doubt it would have been better if it had been possible to calculate the concealed profits of the assessee on turnover basis. But the assessee withheld their books of account which made it impossible for us to find out the amount of turnover. The absence of the previous two deeds of agreement made it impossible for us to determine with confidence the rate of commission which was allowed by the Orient Paper Mills Ltd, during the period covered by those agreements. Out of the sale proceeds of paper received by the assessee from the customers, some amount may have been spent at the business premises before they were deposited in the bank. In these circumstances, it is not possible to adopt the turnover method. If the assessee's books of account had been before us, the 'turnover' basis would have been the best method of arriving at the profits made from the paper business.

37. It was then argued on behalf of the assessee that whatever secret profits they made must be reflected in their investments and the undisclosed profits of Shri Ram Kumar Kejriwal H.U.F. whose case proceeds on investment basis, must be taken as a guide for determining the concealed profits made from the paper business. We are of the opinion that this would be a safe guide in the circumstances of this case. In dealing with the case of Shri Ram Kumar Kejriwal H.U.F. we have held this concealed income during the investigation period to be Rs 17,51,750/-. This figure represents not only Ram Kumar Kejriwal's share from the paper business but also his profits from other sources. He had the business of share and stock dealers and broker.

He had jute business too, but the bulk of the income was from the paper business. By a notice dated the 3rd of August, 1953, the assessee was requested to furnish a detailed statement showing the specific items of concealment in the business of dealing in shares and securities. But the assessee has failed to file the statement called for. We are inclined to believe that the default is deliberate. It may, therefore, be assumed that the concealed profits from this business were almost insignificant. In the absence of account books, we can only make an estimate as to what part of his investments relates to paper business and what to other business. We are of the opinion that out of the total concealed income of Rs 17,51,750/- determined as that of Ram Kumar Kejriwal H.U.F., Rs 12,00,000/- should be taken as the income from paper business and the balance from other business. As the share of Ram Kumar Kejriwal H.U.F. in paper business was one half, the double of this amount, viz. Rs 24,00,000/- may be held to be the concealed profits made from the paper business.

38. The assessees claim an allowance of Rs 3 lakhs for the opening balance of cash at the commencement of the investigation period. In the absence of the relevant account books, it is not possible to determine with any exactitude the correct amount which the assessees brought forward from the pre-investigation period. Having regard, however, to the nature of the business in which they were engaged, they must have brought forward some cash from the pre-investigation period. We estimate this amount at Rs 75,000/- in view of the nature and the volume of

business in which they were engaged.

39. Further the assessee claim a deduction of Rs 3,66,200/- on account of depreciation (as detailed below) on shares in which a part of their undisclosed profit was invested:—

Sl.No.	Quantity	Name of shares	When purchased	Purchase rate	Rate on 31-3 47	Present Rate	Amount of depreciation claimed
1.	2,800	Jaipur Development	1943	10/-	4/4/-	3/8/-	18,200
2.	1,800	Model Knitting Industries Ltd	1946	20/-	5/-	Nil	36,000
3.	37,800	Rajasthan Trading Co	1943 to 1946	10/-	5/4/-	Liquidation	1,80,000
4.	22,750	Jaipur Development	1943	10/-	4/4/-	3/8/-	1,32,000
Total							3,66,200

40. *Jaipur Development Shares.* So far as the Jaipur Development shares are concerned, the two branches of the assessee, viz. Shri Ram Kumar Kejriwal and Shri Bilasrai Kejriwal, admitted having acquired two lots of 45,500 and 5,600 shares respectively of this company in 1943 at Rs 10/- per share out of unaccounted funds. One half of the acquisition is shown by Ram Kumar Kejriwal and the other half by Bilasrai Kejriwal. They stated that the value of the shares at the end of the investigation period (31.3.1947) depreciated to Rs 4-4-0 per share and at present it had further depreciated to Rs 3-8-0 per share. The amount of depreciation between the original value and the present

value of 22,750 shares and 2,800 shares has been claimed by each of them at Rs 1,32,000 for 22,570 shares and Rs 18,200 for 2,800 shares. The 45,000 shares were sold away in 1948 outside the accounts. As these shares are not held by the assesseees at present, no depreciation can be allowed in respect thereof. Of course, in the income tax assessment which the income tax authorities may make in respect of the year in which they were sold, the point may be raised as to whether there was any business loss in that year and, if so, of what amount.

41. Regarding the second lot of 5,600 shares, it is stated that they are still held by the assesseees in the following names—

(a) Ram Pratap Jajodia	3,000
(b) Sanwalram Jajodia	2,500
(c) Sagarmal Jajodia	100
	<hr/> 5,600 <hr/>

The distinctive numbers of these shares have not been furnished by the assesseees, nor have they got the transfers made in their favour. The shares of this company are not quoted on the Stock Exchange. From the books of Ram Kumar Kejriwal & Co., it appears that 17,500 shares were purchased on 21.3.1950 at Rs 4-12-0 per share from the United Commercial Bank Ltd. The payment was made by cheque. It may, therefore, be taken that the depreciation is to the extent of Rs 5-4-0 per share. The depreciation on the block of 2,800 shares held by Ram Kumar Kejriwal, therefore, works out to Rs 14,700/-

42. *Model Knitting Industries Shares.* This is a public company. Its balance sheet as on 31.3.1950 shows that as against the paid up capital of Rs 9,50,000 plus premium on shares, Rs 1,20,000/-, total Rs 10,70,000/-, there was a loss of Rs 2,66,136/-. It is said that to this loss should now be added the tax of about 6 lakhs which this Commission has reported against the company. It is argued that judged in this light, the share-capital and the premium on shares are almost nullified. If the tax reported by this Commission against the company is taken on the debit side, the undisclosed profit determined by it should be taken on the credit side. In the course of our investigation of this company we found that it was in a bad way at present and so we assess the depreciation of the shares to the extent of 50%. The depreciation allowable to the assessee under this head is thus Rs 13,000.

43. *Rajasthan Trading Company Shares.* These shares are not held by the assessee at present. They were sold away before the liquidation of the company. Hence, there can be no question of allowing any depreciation in respect of the shares of this company.

44. The total depreciation allowable to Ram Kumar Kejriwal, H.U.F. is thus Rs 32,700/-.

45. Allowing Rs 67,000/- for the opening balance and Rs 32,700/- for the depreciation in the value of the shares, the net assessable undisclosed profit in the hands of Ram Kumar Kejriwal, H.U.F., is Rs 16,44,050/-.

46. Shri Ram Kumar Kejriwal, H.U.F., along with Shri Bilasrai Kejriwal, H.U.F. applied for settlement of the case

at the conclusion of the hearing. Earlier at the hearing of the case before us, the assessee disclosed a concealed income of Rs 18 lakhs. At the conclusion of the hearing when we announced our decision to the assessee, they made a formal application for settlement, the terms and conditions of which are contained in the enclosed application. We may note here that Shri Ram Kumar Kejriwal made a disclosure of the following shares and deposits which did not appear in the authorized official's report:—

	Rs
1,800 shares of Model Knitting Industries	36,000
2,500 shares of Padmavati Raje Cotton Mills	25,000
850 shares of Jute & Stores Ltd	85,000
37,800 shares of the Rajasthan Trading Co., Ltd	3,78,000
22,750 shares of the Jaipur Development Co., Ltd	2,27,500
Deposit with the Regent Estates Ltd	45,000
	<hr/> 7,96,500

Besides the above, they claimed the credit of disclosure of Rs 1,68,000/- for gold, bullion and jewellery disclosed by them in the total wealth statement. They also claim the credit of disclosure of Rs 50,000/- which they allege to have admitted as the cash-in-hand at the end of the investigation period. In view of the disclosures of the shares and deposits made by the assessee, we recommend that the settlement may be accepted on the terms and conditions contained in the application.

47. It may be mentioned that Shrimati Gogi Devi, wife of Shri Ram Kumar Kejriwal, was assessed to income tax between 1942-43 and 1947-48 as an individual. The total

income assessed in her hands was Rs 34,799/-. The total tax assessed upon her in these years is Rs 2,344-6-0. Her source of income *inter alia* was rent from house property 12/1 Alipore. As the house property has been held to have been purchased from the funds of Ram Kumar Kejriwal, H.U.F., it is claimed that in determining the tax payable by Ram Kumar Kejriwal, an allowance must be made for the tax assessed against Shrimati Gogi Devi in respect of the rent realized by her for this house. From paragraph 16(11) and (12) *supra*, it will be seen that the income from rent has been excluded in the computation of the concealed income of Shri Ram Kumar Kejriwal, H.U.F. HENCE no deduction of Rs 2,344-6-0 should be made from the tax payable by Shri Ram Kumar Kejriwal, H.U.F. as it is stated by the assesseees that in October, 1947, there was a partition in the family of Ram Kumar Kejriwal, H.U.F. and Shrimati Gogi Devi was not given a share, because this house stood in her name. We express no opinion on this plea as the partition was after the close of the investigation period. All what we have determined is that the price which was paid for the acquisition of this house came from the funds of Ram Kumar Kejriwal, H.U.F.

48. It remains for us to determine the penalty payable by Ram Kumar Kejriwal, H.U.F. We are of the opinion that having regard to all the circumstances of the case, the assesseees should pay a penalty of Rs 50,000/-.

49. *Shri Bilasrai Kejriwal, H.U.F.* The O.S.D. computes the concealed profits of Shri Bilasrai Kejriwal (H.U.F.) at Rs 29,10,666/- as under:

<i>Description</i>	<i>Amount</i>	<i>Reference to OSD's Report</i>
1. Paper business	24,35,000/-	Sub-para (i) of para 8
2. Payment from Bengal stores Ltd	7,200/-	Sub-para (ii) of „ 8
3. Sale proceeds of gold bullion	21,595/-	Sub-para (iii) of „ 8
4. Fictitious deposit	5,000/-	Sub-para (iv) of „ 8
5. Fictitious losses in speculation	2,18,460/-	Sub-para (v) & (vi) of „ 8
6. Fictitious losses in hessian speculation	1,72,813/-	Paras 1 & 2 of suppl. report dt. 22.6.53 re. Sri Bilasrai Kejriwal
7. Share of profit from Radhakishan Riddhikaran	50,598/-	Para 3 of suppl. report dated 22-6-53.
Total	<u>29,10,666/-</u>	

50. In paragraph 30 to 37 *supra*, we have determined the concealed profits from the paper business at Rs 24,00,000/-. Half of it is Rs 12,00,000/- and this amount should be taken as the concealed profits of Bilasrai Kejriwal, H.U.F. from paper business.

51. As regards the item of Rs 7,200/-, the Officer on Special Duty states in his report that the assessee received it from the Bengal Stores Ltd for services rendered in connexion with the management of its affairs. An examination of the account books shows that Rs 720 only were received. As it is in the books, this cannot be taken to be a concealed profit. Moreover, this amount was received after the investigation period on the 12 June 1947. It is alleged on behalf of the assessee that this amount has already been assessed.

52. A sum of Rs 21,596-10-0 was found credited to the personal account of the assessee on the 26 June 1945, in

respect of the sale proceeds of gold through M/s Shivpujan Rai Indrasan Rai. It has been held by the officer on special duty that there was really no sale of gold and secret money was brought into the books in this manner. The item is not contested by the assessees, and it should be included in the computation of the secret income of the assessees.

53. The account books for 1942-43 contain a deposit of Rs 5,000/- in the name of Balmukund Laxmi Narain. It was brought forward from the preceding year and it remained until the close of the investigation period. No interest was allowed thereon. From the assessment records of 1939-40, it, however, appears that this deposit was shown as the opening balance. As this amount relates to the pre-investigation period, it must be excluded.

54. In 1944-45 and 1945-46, speculation losses of Rs 21,832 and Rs 58,479 respectively were shown in the profit and loss account. Again, it appears that the following losses in shares were claimed by the assessee in the partnership business styled as M/s Sewaram Bilas Rai.

<i>Accounting year</i>	<i>Amount</i>
	Rs
1943-44	19,268
1944-45	1,70,387
1945-46	86,643
	<hr/> 2,76,298

The assessee's half shares in the losses works out to Rs 1,38,149/-. The Officer on Special Duty after a thorough investigation, has arrived at the conclusion that the losses

claimed by the assessee were fictitious and that this amount of Rs 1,38,149/- should be added back to the concealed profits. This was not disputed before us by the assessee. Hence, Rs 2,18,460/- must be taken into consideration in the computation of the concealed income.

55. As regards the item of Rs 1,78,813/- and the share of profit of Rs 50,598/-, the assessee admitted them at the final hearing before us, subject to the condition that a sum of Rs 70,875/- should be excluded as it was passed on to M/s Ram Kumar Kejriwal & Co. There does not appear to be any cogent reason or justification for passing on the loss of Rs 70,875/- to M/s Ram Kumar Kejriwal & Co. Both these items should therefore be included in the computation of the secret income of the assessee.

56. The secret profits of Shri Bilasrai Kejriwal., H.U.F. therefore work out as follows:

S. No.	Description	Amount
1.	Profits of paper business	12,00,000
2.	Sale proceeds of gold bullion	21,595
3.	Losses in speculation	2,18,460
4.	Losses in hessian speculation	1,72,813
5.	Share of profit from Radhakishen Ridhkaran	50,598
Total		16,63,466

No deduction on account of opening cash balance can be allowed to Shri Bilasrai, as his undisclosed income has been determined on source basis. A sum of Rs 32,700/- for depreciation of shares as discussed in paragraphs 39 to 44 *supra* when dealing with the case of Ram Kumar Kejriwal, H.U.F. will have to be deducted from the sum.

The net assessable undisclosed profits in the hands of Bilasrai Kejriwal, H.U.F. thus work out at Rs 16,63,466/-. It has already been mentioned above that he along with Ram Kumar Kejriwal made a disclosure of rupees eighteen lakhs... early at the hearing of the case and applied for settlement. At the conclusion of the hearing when we announced our findings, a formal application (copy enclosed) for settlement was made along with Ram Kumar Kejriwal. These assessee made disclosures of items which were not in the Officer on Special Duty's report. We consider the terms reasonable and recommend their acceptance by the Government. As in the case of Ram Kumar Kejriwal, we are of opinion that in this case also a penalty of Rs 50,000/- is adequate.

57. At the partition of 1939 between the two branches of the family, equal property and business were allotted to each branch. No wonder, therefore, that the assessable net income determined for each branch is almost equal.

58. Shri Beni Shankar Sharma, learned counsel for the assessee, claims that the credit of voluntary disclosure in the shape of imposition of tax at 66½ per cent should be extended to Shri Ram Kumar Kejriwal, in respect of the following items :—

	Rs
1,800 shares of the Model Knitting Industries Ltd	36,000
2,500 shares of the Padmavati Raje Cotton Mills	25,000
850 shares of the Jute & Stores Ltd	85,000
37,800 shares of the Rajasthan Trading Co.	3,78,000
22,750 shares of the Jaipur Development Co., Ltd	2,27,500
Deposit with Regent Estates Ltd	45,000
Gold, bullion & jewellery	1,68,000
Cash-in-hand	50,000
Total	10,14,500

Shri Beni Shankar Sharma has further claimed the credit of disclosure for Bilasrai Kejriwal also to the extent of Rs 10,14,500/-.

59. *Model Knitting Industries Ltd, Shares.* The total wealth statement shows that Ram Kumar Kejriwal's sons, Har Kishore Kejriwal and Chandra Kishore Kejriwal admitted that they held 1,800 shares of this company. Similarly, the total wealth statement of Shri Bilasrai Kejriwal and his son, Ridhkaran Kejriwal, shows that they also admitted having held 1,800 shares of this company. As these shares were disclosed by them before the Officer on Special Duty started the investigation, the credit of disclosure must be given to them.

60. *Padmavati Raje Cotton Mills Shares.* Har Kishore Kejriwal and Chandra Kishore Kejriwal, sons of Shri Ram Kumar Kejriwal, admitted in their total wealth statements having held 2,500 shares of this company. Similarly, Shri Bilasrai Kejriwal and his son, Ridhkaran Kejriwal, also admitted in their total wealth statements having held 2,500 shares of this company. The credit of voluntary disclosure in respect of the shares of this company must, therefore, be given to the assesseees.

61. 1,700 shares of the *Jute and Stores Ltd*

75,600 shares of the *Rajasthan Trading Co., Ltd*

45,500 shares of the *Jaipur Development Co., Ltd*

These shares do not appear in the Officer on Special Duty's report, dated 6th April, 1953. They, however, appear in the disclosure statement dated the 22 June 1953, filed by the assesseees. The credit of voluntary

disclosure must, therefore, be given to them half and half, in respect of these shares.

62. *Deposit with the Regent Estates Ltd.* Rs 45,000/-. This deposit does not appear in the total wealth statement of any of the assesseees. It appears, however, in the disclosure statement of Shri Ram Kumar Kejriwal. It does not appear in the report dated 6.4.1953 of the Officer on Special Duty. The credit of voluntary disclosure in regard to this item must be given to Ram Kumar Kejriwal, H.U.F.

63. As regards the gold, bullion and jewellery, although their existence was admitted in the total wealth statements, it was added that a part of it came to the assesseees before the investigation period and a part was received by them as gifts. They never admitted that the gold, bullion and jewellery were acquired from their undisclosed income. Hence, the credit of voluntary disclosure cannot be extended to them in respect of Rs 1,68,000/-.

64. As regards the cash-in-hand at the end of the investigation period, in the total wealth statement, the assesseees stated only that they had an insignificant or a small amount of cash. They did not give any figure. The credit of voluntary disclosure, therefore cannot be given to them in respect of Rs 50,000/-.

65. As a result of the above findings, Shri Ram Kumar Kejriwal is entitled to the credit of voluntary disclosure in respect of Rs 7,95,500/- as detailed below:

	Rs
1,800 Model Knitting Industries Ltd, shares	36,000
2,500 shares of Padmavati Raje Cotton Mills	25,000
250 shares of Jute and Stores Ltd	85,000
37,800 shares of the Rajasthan Trading Co., Ltd	3,78,000
22,750 shares of the Jaipur Development Co., Ltd	2,27,500
Deposit with the Regent Estates Ltd	45,000
Total	7,96,500

Shri Bilasrai Kejriwal is entitled to the credit of voluntary disclosure in respect of Rs 7,96,500/-, Rs 45,000/- representing the deposit in the Regent Estates Ltd or Rs 7,51,500/-.

66. It remains now to determine the tax payable by the two branches. The income in the hands of Shri Ram Kumar Kejriwal, H.U.F., during the investigation period (11.11.1939 to 31.2.1947) which escaped assessment amount to Rs 16,76,750/-. It consists of (i) Rs 7,96,500/- disclosed by the assessee during the course of the investigation without previous detection, and (ii) Rs 8,80,250/- detected on investigation. From the former i.e., Rs 7,96,500/- a deduction of Rs 18,000/- is allowed for depreciation in the value of 1,800 shares of the Model Knitting Industries Ltd which was one of the investments disclosed by the assessee during the investigation without previous detection and from the latter i.e., from Rs 8,80,250/- a deduction of Rs 14,700/- is allowed for depreciation in the value of 2,800 shares of the Jaipur Development Co., Ltd, which was one of the concealed investments detected on investigation. The amounts of income that will now be charged to tax will thus be (i) Rs 7,78,500/- voluntarily disclosed by the assessee and (ii) Rs 8,65,550/- not so disclosed, total Rs 16,44,050/-.

The tax on the above Rs 7,78,500/- which was voluntarily disclosed by Shri Ram Kumar Kejriwal, H.U.F., shall be at 66 $\frac{2}{3}$ % while on Rs 8,65,550/- it shall be at 75%. On this basis the tax payable by Shri Ram Kumar Kejriwal, H.U.F., shall be Rs 5,19,000/- plus Rs 6,49,162-8-0, total Rs 11,68,162-8-0.

The penalty payable by Shri Ram Kumar Kejriwal, H.U.F., shall be Rs 50,000/-. The total of tax and penalty shall thus be Rs 12,18,162-8-0.

The income in the hands of Shri Bilasrai Kejriwal, H.U.F., during the investigation period (11.11.1939 to 31.3.1953) which escaped assessment amounted to Rs 16,63,466/-. It consists of (i) Rs 7,51,500/- disclosed by the assessee during the course of the investigation without previous detection and (ii) Rs 9,11,966/- detected on investigation. From the former i.e., Rs 7,51,500/- a deduction of Rs 18,000/- is allowed for depreciation in the value of 1,800 shares of the Model Knitting Industries Ltd which was one of the investments disclosed by the assessee during the investigation without previous detection and from the latter i.e., from Rs 9,11,966/- a deduction of Rs 14,700/- is allowed for depreciation in the value of 2,800 shares of the Jaipur Development Co., Ltd which was one of the concealed investments detected on investigation. The amount of income that will now be charged to tax will thus be (i) Rs 7,33,500/- voluntarily disclosed by the assessee and (ii) Rs 8,97,266/- not so disclosed = total Rs 16,30,766/-.

The tax on the above Rs 7,33,500/- which was voluntarily disclosed by Shri Bilasrai Kejriwal, H.U.F., shall be at

66 $\frac{2}{3}$ % while on Rs 8,97,266/- it shall be at 75%. On this basis the tax payable by Shri Bilasrai Kejriwal, H.U.F., shall be Rs 4,89,000/- plus Rs 6,72,949-8/- = total Rs 11,61,949-8/-.

The penalty payable by Shri Bilasrai Kejriwal, H.U.F., shall be Rs 50,000/-. The total of tax and penalty shall thus be Rs 12,11,949-8/-.

76. On the acceptance of the settlement, the tax and penalty payable will be as follows:

I. Shri Ram Kumar Kejriwal, H.U.F. (R.C.No. 831/38)		
Shri Nawal Kishore Kejriwal (R.C.No. 831/40)		Rs 11,86,162/8/-
Shri Har Kishore Kejriwal (R.C.No. 831/41)		
Shri Chandra Kishore Kejriwal (R.C.No. 831/42)		
(all jointly and severally liable)		
	Penalty	Rs 50,000/-
	Total	Rs 12,18,162/8/-
II. Shri Bilasrai Kejriwal (R.C.No. 831/39)		
Shri Ridhkaran Kejriwal (R.C.No. 831/43)		Rs 11,61,949/8/-
(Both jointly and severally liable)		
	Penalty	Rs 50,000/-
	Total	Rs 12,11,949/8/-

68. As the income from the selling agency of the Orient Paper Mills has been assessed in the hands of the two branches, it is not necessary to make any separate assessment in the referred case No. 831/37, Messrs Ram Kumar Kejriwal.

This is our report in R.C. Nos. 831/37, 831/38, 831/39, 831/40, 831/41, 831/42, and 831/43.

Sd/- A. V. Vishwanath Sastri (Chairman)

Sd/- Bind Basni Prasad (Member.)

Sd/- S. D. Nargelwala „

Dated, the 12th December, 1953.

Sd/- R. N. Jain (Secretary)

Income Tax Investigation Commission

Ministry of Finance

(Revenue Division).

TERMS AND CONDITIONS OF SETTLEMENT

R.C. Nos. 831/37, 39 and 43.

1. It is agreed by the assessee that on the materials placed before the Commission the income, profits and gains which escaped assessment in the hands of Bilasrai Kejriwal, H.U.F., during the investigation period (11.11.1939 to 31.3.47) amount to Rs 16,63,466/- consisting of (i) Rs 7,51,500/- disclosed by the assessee during the course of the investigation without previous detection and (ii) Rs 9,11,966/- detected on investigation.

2. It is further agreed that from the sum of Rs 7,51,500/- referred to in clause *supra*, a deduction of Rs 18,000/- shall be allowed for depreciation in the value of 1,800 shares of the Model Knitting Industries Ltd which was one of the investments disclosed by the assessee during the investiga-

tion without previous detection and from the sum of Rs 9,11,966/-, referred to in clause 1 *supra*, a deduction of Rs 14,700/- shall be allowed for depreciation in the value of 2,800 shares of the Jaipur Development Co., Ltd which was one of the concealed investments detected on investigation.

3. It is further agreed that deducting the allowance for depreciation, specified in clause 2 *supra*, from the amount of Rs 16,63,466/-, specified in clause 1 *supra*. The amount of income now charged to tax will thus be (i) Rs 7,33,500/- voluntarily disclosed by the assesseees and (ii) Rs 8,97,266/- not so disclosed, totalling Rs 16,30,766/-.

4. It is further agreed that out of the sum of Rs 16,30,766/- specified in clause 3 *supra*, the tax on Rs 7,33,500/- voluntarily disclosed by the assesseees shall be at 66 $\frac{2}{3}$ per cent and the tax on the balance of Rs 8,97,266/- shall be at 75 per cent. On this basis, the tax payable by the assesseees shall be Rs 4,89,000/- plus Rs 6,72,949-8-0, or Rs 11,61,929-8-0.

5. It is further agreed that the penalty payable by the assesseees shall be Rs 50,000/- and the total of tax and penalty payable shall thus be Rs 12,11,949-8-0.

6. It is further agreed that Bilasrai Kejriwal and his son, Ridhakaran Kejriwal, referred to in this settlement as 'the assesseees', shall be jointly and severally liable for the tax and penalty payable under clauses 4 and 5 *supra*.

7. It is further agreed that on or before 15.1.1954, the assesseees or any of them shall obtain transfers of 2,800 shares of the Jaipur Development Company Ltd and 1,800 shares

of the Model Knitting Industries Ltd, in respect of which depreciation has been allowed at the rate of Rs 5/4/- per share of the first mentioned company and at Rs 10/- per share of the secured one, transferred to his name.

8. It is further agreed that as a depreciation allowance of Rs 18,000/- has been granted against the voluntary disclosed income and a depreciation allowance of Rs 14,700/- has been granted against the detected income to the assessee, they shall be liable to pay to the Government by way of further tax an amount equal to 66 $\frac{2}{3}$ per cent and 75 per cent respectively of the appreciation, if any, that may take place in the market value of the said shares of the Model Knitting Industries Ltd and the Jaipur Development Co. Ltd, before the tax liability under this settlement is discharged, the extent of such appreciation being calculated with reference to the value now adopted as the present value of the shares.

Provided, however, that if the value of any of the aforesaid shares appreciates after the same have been sold off by the assessee in accordance with the provisions of this settlement, such subsequent appreciation shall not be taken into account for the purposes of imposing on the assessee a further tax liability.

9. It is further agreed that in order that an account of a depreciation, if any, in the value of the said shares as provided for in the last preceding clause may be taken, the assessee shall file with the Secretary to the Income tax Investigation Commission at New Delhi, on or before 31.1.1954, a list with the distinctive numbers of the shares in respect of

which depreciation allowance is being granted and statements in writing from the principal officer of the respective companies that the shares have been transferred to the name of Bilasrai Kejriwal, as provided in clause 7 *supra*.

10. It is further agreed that the assesseees shall not alienate except with the previous consent of the Commissioner of Income Tax, Calcutta, and for the purpose of paying the tax due under this settlement, the aforesaid shares in respect of which depreciation has been granted under this settlement and in case of any of the said shares are sold with the previous permission as aforesaid, a report stating the rate at which the same have been sold and the price realized shall be submitted within a week of such sale to the aforesaid Commissioner of Income Tax in order that an account may be taken for the purposes of determining whether any further tax shall be payable.

11. It is further agreed that on default by the assesseees in complying with any of the undertakings specified in the first preceeding four clauses, the depreciation allowance hereby granted will stand disallowed in toto as against the assesseees and the Government shall be free to assess the assesseees to tax at the rate of 66½ per cent on Rs 18,000/- and 75 per cent on Rs 14,700/-.

12. It is further agreed that it shall be opened to the assesseees or any of them to apply to the Government for time for payment of the tax payable under this settlement and for the Government to grant them such time as it thinks fit and on such terms and conditions as it might impose to safeguard the revenue.

13. It is further agreed that in case any other item of concealed income, not covered by this settlement or the report of the Commission made in connexion therewith, comes to light in future, the Commission shall be free to report on and the department to tax the same either on such report or by proceedings taken in accordance with the ordinary income tax law.

14. It is agreed by the Central Government that upon a due compliance by the assesseees with the terms and conditions above set out there shall be no proceedings by way of further penalty or prosecution against the assesseees on account of anything done or omitted to be done in the course of the present proceedings or on account of the non-disclosure of the income covered by this settlement at an earlier stage either before the Commission or before the Income tax authorities.

BEFORE THE INCOME TAX INVESTIGATION COMMISSION

In the matter of

R.C. No. 831/37	Messrs Ram Kumar Kejriwal.
R.C. No. 831/39	Shri Bilasrai Kejriwal.
R.C. No. 831/43	Shri Ridhkaran Kejriwal.

AND

In the matter of

(1) Bilasrai Kejriwal, son of Mohadeo Lal	} Merchants, residing at Calcutta.
(2) Ridhkaran Kejriwal, son of Bilasrai Kejriwal	
	Petitioners.

The petitioners above-named beg to state as follows:

1. The above-mentioned cases of the petitioners who belong to the same family were referred to the Income Tax Investigation Commission under section 5 of Act XXX of 1947 and investigation by the Authorized Official.

2. The Authorized Official having submitted his reports, the Commission heard the cases on the 22nd and 23rd June, 29th June, 22nd July to 1st August, 5th October to 9th October, 30th November, and 1st December, 1953, the assessee being represented by Shri B. S. Sharma and Shri B. P. Khaitan.

3. At the conclusion of the hearing, the Commission announced its decision as follows:

(a) The Income in the hands of Bilasrai Kejriwal, H.U.F. during the investigation period (11.11.1939 to 31.3.1947), which escaped assessment amounts to Rs 16,63,466/-. It consists of (i) Rs 7,51,500/- disclosed by the assessee during the course of the investigation without previous detection and (ii) Rs 9,11,966/- detected on investigation. From the former, i.e., Rs 7,51,500/- a deduction of Rs 18,000/- is allowable for depreciation in the value of 1,800 shares of the Model Knitting Industries Ltd, one of the investments disclosed by the assessee during the investigation without previous detection and from the latter, i.e., from Rs 9,11,966/-, a deduction of Rs 14,700/- is allowable for depreciation in the value of 2,800 shares of the Jaipur Development Co., Ltd one of the concealed investments detected on investigation. The amount of income that now remains to be charged to tax will thus be

- (i) Rs 7,33,500/- voluntarily disclosed by the assessee and
(ii) Rs 8,97,266/- not so disclosed, totalling Rs 16,30,766/-.

(b) The tax on the above sum of Rs 7,33,500/- which was voluntarily disclosed by Bilasrai Kejriwal, shall be at 66 $\frac{2}{3}$ per cent while on Rs 8,97,266/- it shall be at 75 per cent. On this basis, the tax payable by Bilasrai Kejriwal and his son, the petitioners shall be Rs 4,89,000/- plus Rs 6,72,949-8-0, totalling to Rs 11,61,949-8-0.

(c) The penalty payable by the petitioners shall be Rs 50,000/-. The total amount of tax and penalty shall thus be Rs 12,11,949-8-0.

4. The petitioners accept the decision of the Commission as contained in paragraph 3 *supra* and offer the following terms for the settlement of the referred cases, Nos. 831/37, 831/39 and 831/43, under section 8A of Act XXX of 1947.

(a) That on the materials placed before the Commission the income, profits, and gains which escaped assessment in the hands of Bilasrai Kejriwal, H.U.F. during the investigation period (11.11.1939 to 31.3.1947), amount to Rs 16,63,466/- consisting of (i) Rs 7,51,500/- disclosed by the assessee during the course of the investigation without previous detection and (ii) Rs 9,11,966/- deducted on investigation.

(b) That from the sum of Rs 7,51,500/-, referred to in clause (a) *supra*, a deduction of Rs 18,000/- shall be allowed for depreciation in the value of 1,800 shares of the Model Knitting Industries Ltd which was one of the assessments disclosed by the assessee during the investigation without

previous detection and from the sum of Rs 9,11,966/- referred to in clause (a) *supra*, a deduction of Rs 14,700/- shall be allowed for depreciation in the value of 2,800 shares of the Jaipur Development Co., Ltd, which was one of the concealed investments detected on investigation.

(c) That deducting the allowance for depreciation, specified in clause (b) *supra*, from the amount of Rs 16,63,466/- specified in clause (a) *supra*, the amount of income now charged to tax will thus be (i) Rs 7,33,500/- voluntarily disclosed by the assesseees and (ii) Rs 8,97,266/- not so disclosed, totalling Rs 16,30,766/-.

(d) That out of the sum of Rs 16,30,766/-, specified in clause (c) *supra*, the tax on Rs 7,33,500/- voluntarily disclosed by the assesseees shall be at 66 $\frac{2}{3}$ per cent and the tax on the balance of Rs 8,97,266/- shall be at 75 per cent. On this basis the tax payable by the assesseees shall be Rs 4,89,000/- plus Rs 6,72,949-8-0, or Rs 11,61,949-8-0.

(e) That the penalty payable by the assesseees shall be Rs 50,000/- and the total of tax and penalty payable shall thus be Rs 12,11,949-8-0.

(f) That Bilasrai Kejriwal and his son, Ridhkaran Kejriwal referred to in this settlement as "the assesseees", shall be jointly and severally liable for the tax and penalty payable under clauses (d) and (e) *supra*.

(g) That on or before 15.1.1954, the assesseees or any of them shall obtain transfers of 2,800 shares of the Jaipur Development Company Ltd and 1,800 shares of the Model Knitting Industries Ltd in respect of which depreciation

has been allowed at the rate of Rs 5/4/- per share of the first mentioned company and at Rs 10/- per share of the second one, transferred to his name.

(h) That as a depreciation allowance of Rs 18,000/- has been granted against the voluntary disclosed income and a depreciation allowance of Rs 14,700/- has been granted against the detected income to the assessee, they shall be liable to pay to the Government by way of further tax an amount equal to 66 $\frac{2}{3}$ per cent and 75 per cent respectively of the depreciation of any, that may have taken place in the market value of the said shares of the Model Knitting Industries Ltd, and the Jaipur Development Co., Ltd before the tax liability under this settlement is discharged, the extent of such appreciation being calculated with reference to the value now adopted as the present value of shares.

Provided, however, that if the value of any of the aforesaid shares appreciates after the same have been sold off by the assessee in accordance with the provisions of this settlement, such subsequent appreciation shall not be taken into account for the purposes of imposing on the assessee a further tax liability.

(i) That in order that account of appreciation, if any, in the value of the said shares as provided for in the last preceding clause may be taken, the assessee shall file with the Secretary to the Income Tax Investigation Commission at New Delhi on or before 31.1.1954, a list with the distinctive numbers of the shares in respect of which depreciation allowance is being granted and statements in writing from the Principal Officers of the respective companies that the

shares have been transferred to the name of Bilasrai Kejriwal, as provided in clause (g) *supra*.

(j) That the assessee shall not alienate except with the previous consent of the Commissioner of Income Tax, Calcutta, and for the purpose of paying the tax due under this settlement, the aforesaid shares in respect of which depreciation has been granted under this settlement and in case any of the said shares are sold with the previous permission as aforesaid, a report stating the rate at which the same have been sold and the price realized shall be submitted within a week of such sale to the aforesaid Commissioner of Income Tax in order that an account may be taken for the purposes of determining whether any further tax shall be payable.

(k) That on default by the assessee in complying with any of the undertakings specified in the last preceding four clauses, the depreciation allowance hereby granted will stand disallowed in toto as against the assessee and the Government shall be free to assess the assessee to tax at the rate of 66 $\frac{2}{3}$ per cent on Rs 18,000/- and 75 per cent on Rs 14,700/-.

(l) That it shall be open to the assessee or any of them to apply to the Government for time for payment of the tax payable under this settlement and for the Government to grant them such time as it thinks fit and on such terms and conditions as it might impose to safeguard the revenue.

(m) That in case any other item of concealed income, not covered by this settlement or the report of the Commission made in connexion therewith, comes to light in future, the Commission shall be free to report on and the Department

to tax the same either on such report or by proceedings taken in accordance with the ordinary income tax law.

(n) That upon a due compliance by the assesseees with the terms and conditions offered above, there shall be no proceedings by way of further penalty or prosecution against the petitioners on account of anything done or on account of the non-disclosure of the income covered by this settlement at an earlier stage either before the Commission or before the income tax authorities.

The petitioners pray that the terms and conditions offered above may be accepted and the cases may be disposed of in accordance therewith.

Sd/- Bilasrai Kejriwal.

9.12.1953

Sd/- Riddhikaran Kejriwal.

C.No. 74(24)—IT/53

GOVERNMENT OF INDIA
MINISTRY OF FINANCE (REVENUE DIVISION)

New Delhi, dated the 14th January, 1954.

Order under section 8A(2) of the Taxation on
Income (Investigation Commission) Act, 1947.

Whereas the Income-tax Investigation Commission had, by its report dated the 12th December, 1953, under section 8A(1) of the Taxation on Income (Investigation Commission) Act, 1947 recommended certain terms and conditions of settlement in the following cases, namely—

R.C.NO.

831/37	Messrs Ramkumar Kejriwal
831/38	Shri Ramkumar Kejriwal
831/39	„ Bilasrai Kejriwal
831/40	„ Nawalkishore Kejriwal
831/41	„ Harkishore Kejriwal
831/42	„ Chandra Kishore Kejriwal
831/43	„ Ridhkaran Kejriwal

and whereas the recommendation having been accepted by the Central Government, the terms and conditions of settlement have been recorded by the said Commission, the Central Government hereby direct that the demand notices shall, in accordance with the said terms and conditions of settlement, be served immediately by the Income-tax Officer concerned, for a sum of Rs 12,11,940/8/- which includes a penalty of Rs 50,000/-, jointly and severally, on
Bilasrai Kejriwal and
Ridhkaran Kejriwal

and that all such other proceedings under the Indian Income Tax Act or under any other law, as may be necessary, should be taken with a view to enforce the payment of the demand and the terms and conditions of settlement.

The Central Government further directs that the demand notices should specify that the entries sum of Rs 12,11,949/8/- is to be paid in one sum.

Sd/- (G. L. Pophale)

Deputy Secretary to the Government of India

CHAPTER VI

ORIENT PAPER MILLS AND KEJRIWAL

On February 13, 1954 a comparative statement of accounts of the Orient Paper Mills and their Agent was published in the *Jugabani* which showed that (1) sales were suppressed, (2) goods sold in West Bengal were not shown in the accounts and (3) purchasers, shareholders and the State were defrauded through manipulation of accounts.

The Orient Paper Mills were manufacturing Kraft paper. During the war, this variety of paper was not under control and commanded a ready market and a very high price.

When asked by N. C. Roy to submit their accounts, the Mills showed their annual Sales as Rs 1 crore. N. C. Roy disbelieved the accounts and estimated their annual sales at Rs 3 crores. On this basis, he imposed Rs 26,13,671-14-0 as Sales tax on them for three years ended March 31, 1948.

The published accounts of the Mills showed their net profits as follows:

For half year ended 31st March	1946	Rs	3,99,077/-
	31st March 1947	„	4,78,088/-
	31st March 1948	„	9,13,328/-
	31st March 1949	„	10,90,159/-
	31st March 1950	„	14,48,610/-

In September, 1950, the *Mystery of Birla House* was published. The published accounts for the half year ended March 31, 1953, showed an increase in the profit by about 100 per cent:

Sales	Rs	1,77 lakhs
or Rs 3,54 lakhs a year.		
Profit	„	26,31,623 4 3
to this profit may also be added		
Directors' Fees	„	91,989 10 0
Managing Agents' Remuneration	„	7,01,402 5 9
Add again contributions to their own concerns :		
Charity—Hindusthan Trust	„	2,00,000 0 0
Nari Seva Sadan Samity (Sambalpur)	„	25,000 0 0
Total profit	Rs	36,50,015 4 0

This profit was made in a market where prices were falling. It may further be noted that there was no appreciable purchase of new machinery, and old machinery was evaluated at about a crore of rupees. A debenture for Rs 1 crore was issued in 1951. The interest on this debenture for six months was Rs 2,75,000/. If this figure is added to the above mentioned profit, it comes to Rs 39,25,613-4-0. The issue of debenture was not warranted by the economic conditions of the Mills as can be seen from the statement of accounts given below:

	Rs	As	P
(1) Investment in Govt. Papers and savings certificate	79,72,076	0	0
(2) Purchase of own debentures	20,44,251	0	0
(3) Loan to a subsidiary company—Hindusthan Cellulose	7,38,825	0	0
(4) Purchase of shares in companies managed by the Birlas	29,55,152	0	0
(5) F/D. in banks managed by Birlas on nominal interest	65,00,000	0	0
(6) Cash in current account	8,83,688	0	0
(7) Interest deposit	2,23,431	0	0
(8) Sales realisation deposit	75,50,054	0	0
(9) Stores	29,90,858	0	0
(10) Bank & Stores	18,14,803	0	0
	3,18,58,022	0	0
Less Liabilities	1,28,62,299	0	0
	1,89,96,323	0	0

The Company had sufficient funds to run the Mills efficiently even if the Debenture of Rs 1 crore 20 lakhs and the Preference shares of Rs 80 lakhs were repaid. During the half year ended March 31, 1953, the company made the following payments:

Dividends to shareholders	Rs 4,19,500/-
Fees and remuneration to Directors and Mg. Agents	„ 7,92,392/-
Donations of shareholders' money to Birla Institutions	„ 2,25,000/-

Bulk of the paper was diverted to the market through various firms set up in West Bengal by the Mills' *benamdar* Ram Kumar Kejriwal. The Investigation Commission followed the line of investigation adopted by N. C. Roy and detected huge amounts of credit standing in the name of Kejriwal in the Mills' accounts. They were assessed at Rs 24,30,112/-. The Managing Agents of the Mills having been pushed to a very tight corner, became helpless and came out with a disclosure of Rs 40 lakhs as suppressed income. The Commission, after full investigations, estimated their suppressed income at Rs 2 crores. N. C. Roy was proved right. He had also estimated the suppressed sales of Mills exactly at the same figure of Rs 2 crores. N. C. Roy's hard labour devoted to the scrutiny of the Mills' account was fully utilized and justified by the Investigation Commission.

The special feature of the Kejriwal group's activity was evasion of taxes by setting up a chain of *benamdars* who could be retained or evaporated at the convenience of the principals. The *benamdars* might be individuals, partnership companies or joint stock companies. They usually

worked with the same set of employees at the same office room with the same godown but with different letterheads. These employees were paid higher salaries than usual, and were their trusted men.

It was N. C. Roy, Assistant Commissioner, Commercial Taxes, who first detected this method of evasion during his investigation on the Orient Paper Mills case. Mr Roy demanded relevant records, the company replied that they had been destroyed. Against the company's attitude of defiance and non-cooperation, Mr Roy succeeded in establishing that R. K. Kejriwal was really a *benamdar* of the Orient Paper Mills Ltd acting as their Sales Agent in West Bengal, and on this basis he assessed sales tax on the company at Rs 26,13,671-14-0 only. This order was set aside by the Commissioner of Commercial Taxes. After prolonged public agitation by us, and at the instance of Pandit Nehru, a Sales Tax Tribunal was set up which did not accept the findings of Mr Roy and assessed the Mills at Rs 483-8-0 only for five years ended March 31, 1950. The findings of this Tribunal have been published in *Mystery of Birla House*, Part II.

The tax liability of the Kejriwal Group was settled by the Commission at Rs 24,30,112/-. The officers of the Commission openly discussed that credit for this detection should go to Mr N. C. Roy. Every line recorded by the Commission is a silent appreciation of N. C. Roy's work. The readers may be reminded of the fact that N. C. Roy has been removed from Government Service for the crime of having detected this huge fraud upon the Government.

The Commission's report on the Kejriwal Group may be summarized as follows:

(a) N. K. Saxena, Authorized Official (now Commissioner of Income Tax), reported that the Kejriwal Group's concealed income from the selling agency of Orient Paper Mills and other sources amounted to Rs 1,12,02,500/-;

Income from selling agency	Rs 48,70,000/-
Income from other sources	„ 63,32,500/-
	<hr/>
	Rs 1,12,02,500/-

(b) The Group did business in paper under different names, e.g.,

Paper Distributors Ltd, Vijay Laxmi Trading Co., Ltd, Vijay Paper Corporation Ltd, Bengal Laxmi Paper Trading, United India Paper Trading Co., Bamboo Suppliers Ltd.

(c) The Group held large shares in different companies under the management of the Birla Brothers, e.g., Kesoram Cotton Mills Ltd, Birla Jute Manufacturing Co., Ltd, W. B. Coal Fields Ltd, Central India Coal Fields Ltd, Hindusthan Investment Corporation Ltd, Model Knitting Industries Ltd, Padmavati Raje Cotton Mills Ltd, Textile Machinery Ltd, Jaipur Development Co., Ltd, Jute and Stores Ltd, Himalayan Products Ltd (subsidiary of Orient Paper Mills Ltd), Merchandise & Stores Ltd, Upper Ganges Sugar Mills Ltd, United Commercial Bank Ltd, Hindusthan Mercantile Bank Ltd.

(d) The real owners of many such shares were the Birlas.

(e) Books of accounts of various years were not produced before the Commission on the ground that they had been

burnt. Like N. C. Roy the Commission did not believe this story of destruction of books.

(f) Many employees, viz., Sagarmull Jajodia, Sanwal Ram Jajodia, Babulal Pujari, Buland Singh, Ram Pratap Jajodia were *benami* shareholders of various firms and companies.

(g) Having been detected, the Kejriwal Group found that it was no use arguing and therefore they made a disclosure of evasion to the extent of Rs 18 lakhs, on June 22, 1953.

(h) Finally, the amount of evaded tax was settled at Rs 24,30,112/-. On the recommendation of the Commission this amount was accepted by the Government of India's Ministry of Finance by their Order C.No.74(24) I.T./53 dated 14 January 1954, to be paid by:

	Rs	As P
R. K. Kejriwal Group	12,18,162	8 0
Bilasrai Kejriwal	12,11,949	8 0
	<hr/> 24,30,112 0 0	

Doing business under different names and refusal to produce relevant books of accounts when called upon by legally constituted authorities to do so, are features of Birla business. This allegation by N. C. Roy has been proved not only at the Investigation Commission but also at the Industrial Tribunals in West Bengal where disputes against such companies were started by their employees.

It has been proved before the Sixth Industrial Tribunal, West Bengal that a Birla manufacturing concern maintains a number of apparently independent companies with the object of escaping tax liabilities. Mr Sailesh Sengupta, Judge, Sixth Industrial Tribunal, in his judgment delivered

on January 22, 1957 said, 'The case supported by the Union is that the Paper Distributors Ltd and a bunch of other companies were floated by the same group of persons to carry on the same type of business as agents of Orient Paper Mills Ltd which was a paper manufacturing concern. To all appearances these several companies were independent units but in fact they were all chips of the same block. They were so split up with the ulterior object of escaping liability for income and super tax and keeping the employees under the heels of the *Maliks*. Nominally attached to one company the employees were made to work for the other companies as well... The company strongly repudiated the union allegation that the Paper Distributors and the other companies were parts of the same concern kept in isolation out of fraudulent intentions. They were in fact independent and separate concerns... I have evidence before me that employees of one company were transferred to other companies... It is hence clear that the transfers were made in the interests of the companies and not out of consideration for the employees. Unless there was a common denominator or connecting link behind the facade of absolute independence no such transfers could be arranged.'

In this case, Mr B. P. Khaitan, Solicitor for Birla concerns appeared on behalf of the Paper Distributors and Mr D. L. Sen Gupta, Advocate, Calcutta High Court, for the employees. The same old story of hiding vital books of accounts was repeated in this case as well. The Judge remarked, 'The Union called for the godown

books amongst others. The company was directed by the Tribunal to produce books and documents which might be in their possession. The godown books were in their possession but were not produced. The Tribunal is free to make the presumption that if they were produced they would have been found to be unfavourable to the company's case. A cash book written in Marwari script which none of the witnesses could read was produced but it was useless. The case of closure of paper business must hence be discredited. On the collapse of this plea, the company has no case at all.'

In another case before the Second Industrial Tribunal, two of the important employees of the Vijay Luxmi Trading Co., Ltd, made startling revelations. Birendra Kumar Dutta, an employee, said that he was appointed in 1946 by the Orient Paper Mills Ltd and was asked to work in the Vijay Luxmi Trading Co. Ltd and other concerns. He did not get any appointment letter nor did he get any service rules in writing. He was given to understand that Vijay Luxmi Trading Co. and other concerns were the selling agents of the Orient Paper Mills' products. He worked not only in Vijay Luxmi Trading Co. but also in Nirmal Trading Co., Paper Distributors Ltd, Asoke Trading Co., Rajputana General Corporation Ltd and Nandalal Kejriwal. The work of all these concerns was carried on at 104 Old China Bazar Street, Calcutta where the office of Vijay Luxmi Trading Co., Ltd was located. All these concerns had the same business, namely the distribution of the products of the Orient Paper Mills. Dutta told the Court

on solemn affirmation that for the purpose of evading income tax and also not to allow the employees to form any Union, different concerns were started, although all these concerns carried on the same business. Before the employees came to court, conciliation proceedings started before a Labour Officer but nothing could be effected in the conciliation proceedings. The company produced only the balance sheets and nothing else.

Dutta was in the service of the company for 10 years. During his tenure of office, a letter passed through him which contained instructions for manipulation of books so that excise duty could be evaded. The original letter was called from the Orient Paper Mills. Summons was sent by the court by registered post which was received by the company. Dutta produced a photostat copy of the letter in court which is reproduced here. On being cross examined, Dutta told the court that he took the photograph of the letter lest he might be put to trouble in future because the work he was asked to do was not a straight forward work.

Buland Singh was one of the very trusted men of the Birlas. Not only did he serve as an employee, but also acted as one of their dummy directors. Deposing before the Second Industrial Tribunal mentioned above Buland Singh also stated that he worked in the Orient Paper Mills Ltd, Ram Kumar Kejriwal and Co., United India Paper Trading Co. and Vijay Luxmi Trading Co., Ltd all of 104 Old China Bazar Street, Calcutta. He worked all along at 104 Old China Bazar Street, Calcutta. All these concerns had business in paper and board manufactured by

the Orient Paper Mills. He was the Salesman of the company and toured in different provinces. He took orders from Orient Paper Mills for all the concerns through Bilasrai Kejriwal. The Orient Paper Mills supplied goods to one concern, and then for accounting purposes, these goods were transferred from one concern to another, and lastly the goods went to the consumers. The products of the Orient Paper Mills used to come by rotation to different companies. By rotation, Buland Singh meant that the goods coming from one company used to be sold internally to another company in the group, particularly at the end of the financial year. Different addresses were kept by this company (meaning Vijay Luxmi Trading) simply to evade income tax and other taxes. On cross examination, Singh stated that he was appointed one of the Directors of Vijay Luxmi Trading Co., Ltd 'by way of show'. Singh served as Salesman for 17 years. He worked directly under Bilasrai Kejriwal.

In his deposition in court, Shyam Sunder Kejriwal, a Director of the Vijay Luxmi Trading Co., Ltd representing the Birla interest, said that he knew Buland Singh: the nature of his duties was that of a senior Salesman, that is, he managed the whole sales department. S. S. Kejriwal admitted on cross examination that they used to speculate on hessian and shares also, and they used to purchase paper and board only and sell them. This is typical of a Birla enterprise where buying and selling of a commodity go hand in hand with *fatka* business in hessian and shares. The latter operations are utilized to wipe out the profits made

by the former. Kejriwal was surprised when he was confronted in court with a telephone bill in which the address of the Orient Paper Mills had been given as 104 Old China Bazar Street, Calcutta while their Calcutta office was situated at 8 Royal Exchange Place. He could not explain the reason for having two addresses of the Orient Paper Mills with the Telephone authorities. Kejriwal also admitted that Paper Distributors Ltd, Nirmal Trading Co., Asoke Trading Co., Nandalal Kejriwal & Co., Rajputana General Commercial Corporation Ltd, and Ridhkaran Kejriwal Co., Ltd were all sister concerns of Vijay Luxmi Trading Co., Ltd. He explained that by 'sister concerns' he meant that the partners and directors or proprietors of these concerns 'might be' relations and friends of the directors of the Vijay Luxmi Trading Co., Ltd. When questioned about the address of the common godown of these sister concerns, Kejriwal said, 'I cannot say where are the godowns of the concerns which I have described as the sister concerns.'

In this dispute the Vijay Luxmi Trading Co., Ltd had put forward the plea of closure of business on the ground of withdrawal of overdraft facilities by their bankers, the United Commercial Bank. The Judge of the Second Industrial Tribunal, Mr G. P. Mukherjee, who heard the dispute, made the following observation in his award:

The management is said to have terminated their (Dutta, Buland Singh and Nawal Kishore Gupta) services, as the company had to close its business. The primary reason for the closure of its business on 8 December 1955 was that the company which

used to get overdraft facilities from the United Commercial Bank received a letter in November, 1955 from the said Bank to the effect that such credit facilities would be withdrawn, and accordingly it was not possible for this company to run the business, having had paid-up Capital to the extent of Rs 25,000 only. Shri Shyam Sundar Kejriwal, who is one of the Directors of the company has deposed to this effect. He has further said that the United Commercial Bank used to give their company overdraft facilities up to the extent of Rs 4 lakhs. The letter received from the Bank has been produced and proved on behalf of the company, and it is Ex. E. This letter is dated 1 November 1955 addressed to Messrs Vijay Luxmi Trading Co., Ltd by the Manager of the said Bank. By this letter the company was advised that the credit facilities granted to it so long was proposed to be discontinued with effect from 30 November 1955. Too much criticism was made by the learned spokesman on behalf of the Union regarding the bonafides of this letter. Shri Birendra Kumar Dutta went to the length of saying even that no such letter was actually received by the company, while he worked there as Receiving and Despatch Clerk. I have given my most careful and anxious consideration to the criticism made regarding this letter. I am of the view that this criticism is without any force. Such criticism has been made only for the sake of criticism. I cannot persuade myself to believe that a reputed and responsible Bank like the United Commercial Bank would stoop so low as to concoct an ante-dated letter like Ex. E for helping a company like Vijay Luxmi Trading Co., Ltd. It was also argued that as this Bank was more or less connected with Messrs Birla Bros. Ltd, it was possible for the Bank to send such a letter. I may say straightaway that such argument is unworthy of credit and

acceptance, and accordingly it is turned down. As stated already, the letter from the Bank (Ex. E) is dated 1 November 1955. Birendra Kumar Dutta was constrained to admit in his evidence that in the first week of November, 1955 he was irregular in attendance in his office and that on some days at that time, he came to office even after 1 p.m. So, it was not unlikely that the said letter of the Bank (Ex. E) reached the office of the company during his absence, and might have been received by somebody else. Such a possibility cannot be ruled out altogether. Evidence has been led on behalf of the Union that the said letter of the Bank was produced by the company before the Deputy Labour Commissioner in the conciliation proceedings, but the said officer refused to put reliance on the Bank's letter, and remarked that as the United Commercial Bank was also under the control of Messrs Birla Brothers Ltd, the letter as produced from that very Bank could not be accepted as evidence as to the financial position of the company. I called for the file of the Labour Commissioner, and have examined it thoroughly. But I am to say that I do not find that the Deputy Labour Commissioner had remarked so regarding the said letter, nor do I find that the said officer refused to place any reliance on that letter... It appears that the company's capital was only Rs 25,000 and it carried on its transactions by taking loans. In 1953 there was loss. Although there were some profits in the years 1954 and 1955, the said profits cannot be said to be too much. The company carried on its business principally by taking overdraft facilities from the United Commercial Bank. So, when that Bank decided to withdraw the said facilities in November 1955, the company was in a fix. So, if the company after the receipt of this letter from the said Bank withdrawing overdraft facilities had decided to close down its business from December, 1955,

there was no wonder in it. In my opinion, the company took the only possible step that was open before it in such circumstances. In this connection, I may also refer to the evidence of Shri Shyam Sundar Kejriwal. He has stated that when he withdrew overdraft facilities, the Directors of the company had consultations in the matter, and it was decided to close the business. On an examination of the evidence, the Tribunal comes to the conclusion that the company closed its business in December, 1955 due to withdrawal of overdraft facilities by the United Commercial Bank, and that the said closure was bonafide and justified. It cannot be held that the closure of the business was illegal, unjustified or malafide, nor is this Tribunal prepared to believe that the company was actuated by ulterior motives either in closing down the business or in terminating the services of these 3 employees with effect from 9 December 1955.

The above dispute was referred to the Industrial Tribunal by the Government of West Bengal on 20 April 1956. The award was made on 21 September 1956. It is clear from the remarks of the Tribunal Judge made in his award that the entire case depended on that single letter from the United Commercial Bank which stated that overdraft facilities had been withdrawn. The Judge took great pains to justify the letter. The Deputy Labour Commissioner of the West Bengal Government had disbelieved the letter. On an enquiry at the office of the Registrar of Joint Stock Companies, West Bengal, it was revealed that the United Commercial Bank did grant a loan of Rs 5 lakhs to the Vijay Luxmi Trading Co., Ltd against hypothecation of their 'Stocks of paper and paper boards'. The deed of hypothecation was signed by the company and the Bank

Vijay Laxmi Trading Co. Ltd.

13377.

TRUE COPY.

No. W.S.S.

Particulars of Mortgage.

“
”



Filed on 3rd April, 1956.

Seal.

Sd/- M. D. Bhattacharya
Asst. Registrar, Joint Stock
Companies, West Bengal.

Remajum Das
12/12/57
Asstt. Registrar of Companies
West Bengal.

Copied by *San*
11/5/57

Compared by *R.R.*
11/5/57
San (11/5/57)

PARTICULARS OF MORTGAGE OR CHARGE CLEARED BY THE- Vijay Laxal Trading Co.Ltd.

1	2	3	4	5	6
Date of the instrument creating or extinguishing the mortgage or charge and description thereof. (a)	Amount secured by the mortgage or charge (b)	Short particulars of the property charged. (c)	Class of the interest or operation relating to any mortgage or charge. (d)	Name (with address) of the mortgagor or persons entitled to the charge. (e)	Amount of cash for redemption of the mortgage or discount (if any) (f)
Deed of Hypothecation dated 3.3.56.	Rs. 5000/000/- (Rupees Five Lacs only)	Hypothecation of stocks of various companies deposited from time to time and lying in the name of the mortgagor in Calcutta and/or elsewhere else they may be and/or lying in the compound of the mortgagor and/or in transit from one place to another.	The interest at the rate of 2% on the Reserve of Rs. 5000/- shall be calculated and charged on the daily balance in the Bank's cash credit account until the same is fully liquidated and the balance is transferred to the Bank.	Stamp THE UNITED COMMERCIAL BANK Barrabazar Branch 160, Cross Street, Calcutta.	

(a) A Description of the instrument e.g. "Trust Deed", "Mortgage" "Purchase" etc. as the case may be, should be given.

(b) A definite figure is to be given.

Dated this 20th day of March 1956.



Please Register in our name
For THE UNITED COMMERCIAL BANK LTD.

Sd/- Illegible

Accountant
Barrabazar Branch.

on 3 March 1956. The statement containing particulars of mortgage was filed by the company on 3 April 1956. So, when the case was being fought in a court of law on the basis that the company had to close down because it was not possible to run it without bank advances, it was actually enjoying an advance of Rs 5 lakhs. The Bank's letter to the Vijay Luxmi Trading Co., Ltd made (Ex. E) in the court proceedings and the Bank's document referred to above are completely contradictory. Facsimiles of the Deed of Mortgage are given here.

The writer of this book was present during the trial at the Second Industrial Tribunal. The photostat copy of the following letter, to which Dutta had referred, was produced in court which confirmed that these sister concerns acted in union for the purpose of evading taxes. Mr B. P. Khaitan was present when the photostat copy was handed over to the Tribunal Judge. They objected to its admission as evidence. The employees proved that summons had been issued to the Orient Paper Mills for production of the letter in original which they received. As the letter had not been produced, the photostat copy must go down. The Judge admitted it as evidence. The letter runs as follows:

Brajrajnagar,
10th June, 1955.

My dear Kanoriaji,

I am enclosing herewith a copy of Mills letter No.SLS/1/2741 dated 18.8.54 in connection with the rates we revised for Calcutta Distributors.

As we have no record to show Central Excise Authorities regarding the changes in rates, please arrange to send me per return ~~any~~ either copies of your letters to the parties (V.L.T., N.T.C., Ashoke Trdg.Corpn. and Paper Distributors) stating about the revision in rates by you. The letter should be back dated and number should also be corresponding to the numbers in force then i.e. in August '54. We have been charging these special rates till very recently as per our letter stated above i.e. from Aug. '54 onwards. If you like you may also send us original letters from the parties, which should also be back dated as 16.8.54.

Please treat this as extremely urgent as we are expecting a check up of all our bills and acceptance notes by the excise authorities for supplies made during the period when ad valorem duty was in force.

Yours, sincerely,


(P.N. Lala)

Sri S.N. Kanoria,
Calcutta.

Enc:1.

S. N. Kanoria, the addressee of this letter was the Manager of the Orient Paper Mills at their Calcutta Office and P. N. Lala their Sales Manager at the Mills in Orissa. V.L.T. means Vijay Luxmi Trading Co., Ltd and N.T.C. means Nirmal Trading Co. The following letters from S. Kanoria to W. B. Bhudan Yajna Samiti and the Marwari Relief Society shows how such companies were utilized for the disposal of the Mills' products.

ORIENT PAPER MILLS LIMITED
MANAGING AGENTS: BIRLA BROS. LTD

FACTORY :
BRAJRAJNAGAR (E. RLY.)
Phone: JC 8
Tele: 'BIRLA'

8, Royal Exchange Place,
CALCUTTA-1
Phone: 22-3410-20
Tele: "ORIENTPAPER".

UZ/118

2nd September, 1955.

The West Bengal Bhoodan Yajna Samiti,
Diamond Harbour,
24-Parganas.

DEAR SIRs,

Please refer to your letter No. G/491 dated 2.9.55.

We are advising Messrs Vijay Laxmi Trading Co. Ltd.,
104, Old China Bazar Street, Calcutta to supply you 100
reams white printing paper 20×30—24 lbs. at -/11/7 per lb.
less 33% discount plus tax.

Yours faithfully,
For Orient Paper Mills Ltd.

(S. Kanoria)

ORIENT PAPER MILLS LIMITED

FACTORY: 8, Royal Exchange Place,
BRAJRAJNAGAR (E. RLY.) CALCUTTA-1
PHONE: Bank 3411(6 lines)
CABLES: "Orientpaper"

MN/10433

28th June, 1955

Messrs Marwari Relief Society,
Rasayanshala Dept.,
391, Upper Chitpur Road,
CALCUTTA.

DEAR SIRs,

Please refer to your letter No. R/1175 dated 6/7.6.55.

We are advising Messrs Vijay Laxmi Trading Co. Ltd.,
104, Old China Bazar Street, Calcutta to supply you 10
reams M. G. ribbed Kraft paper 29×44—43/44 lbs. at
-/11/4 per lb. less 25% discount plus excise duty.

Yours faithfully,

For Orient Paper Mills, Ltd

(S. Kanoria)

The Nirmal Trading Co. was started in 1950. Its former name was Bengal Laxmi Paper Trading Co. Its partners were Nirmal Kumar Kejriwal (grandson of Bilasrai Kejriwal), Shyam Sundar Kejriwal, who had deposed at the Second Industrial Tribunal, West Bengal, mentioned above, and Rampratap Jajodia.

The Asoke Trading Corporation was formed in 1952. It had

ten partners—4 ladies of the Bilasrai group, 4 ladies of the Ram Kumar group, Rampratap Jajodia and Sagarmull Jajodia (two employees of each group.)

The Vijay Laxmi Trading Co. Ltd was formed in 1946. It had the following seven promoters—

Buland Singh, K. L. Gupta, Babulal Pujari, Nandalal Gheewala, Rampratap Jajodia, Sagarmull Jajodia and Sanwal Ram Jajodia.

These instances are sufficient to prove the intimate relations between the Orient Paper Mills, the Kejriwal groups and the chain of 'Sister Concerns' set up under them for the sole purpose of defrauding the State. N. C. Roy had burnt his fingers by stretching his hands into this fire of conspiracy. The State failed to give him the protection that any Government worth the name of a civilized country must, at all costs, extend to an honest officer trying to discharge his public duties without fear or favour.

